103

DEPARTMENT OF ENERGY HEALTH AND SAFETY STRATEGY

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Department of Energy Health and Saf...

HEARING

BEFORE THE

SUBCOMMITTEE ON ENERGY

OF THE

COMMITTEE ON
SCIENCE, SPACE, AND TECHNOLOGY
U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

SEPTEMBER 22, 1994

[No. 169]

Printed for the use of the
Committee on Science, Space, and Technology

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*Ranking Republican Member.

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DEPARTMENT OF ENERGY HEALTH AND SAFETY STRATEGY

THURSDAY, SEPTEMBER 22, 1994

House of Representatives,
Committee on Science, Space, and Technology,
Subcommittee on Energy,
Washington, DC.

The subcommittee met, pursuant to call, at 1 p.m. in Room 2318, Rayburn House Office Building, Hon. Marilyn Lloyd (chairwoman of the subcommittee) presiding.

Mrs. Lloyd. Good afternoon. The subcommittee will come to order. I would like to ask unanimous consent that today's proceedings be covered by the media.

Without objection, so ordered.

Today, the Subcommittee on Energy will consider the vital issues of safety and health protection at the Department of Energy. Secretary O'Leary and Assistant Secretary O'Toole have undertaken strategic initiatives to upgrade DOE's safety and occupational health programs. The department has taken steps to strengthen its nuclear facilities program. We commend the Secretary and Dr. O'Toole for these important efforts. The Subcommittee on Energy has an ongoing interest in helping to ensure their successful implementation.

In addition to Dr. O'Toole, the subcommittee today welcomes Mr. John Conway, an old friend of this committee. We welcome you, John. I think you have been here the 20 years that I have.

Mr. Conway. Back to 1956.

Mrs. Lloyd. Mr. Conway is the Chairman of the Defense Nuclear Facilities Safety Board. Mr. Jim Wells from the General Accounting Office; and Mr. Sheldon Samuels from the AFL–CIO Workplace Health Fund, who will give us their views on some of the key problems that must be answered.

We welcome new friends and old friends to our hearing today. At this time, I would like to recognize my friend and Ranking Republican Member, Mr. Fawell, for his opening remarks.

[The prepared opening statement of Mrs. Lloyd follows:]

HONORABLE MARILYN LLOYD
OPENING STATEMENT
"DEPARTMENT OF ENERGY HEALTH AND SAFETY STRATEGY"

SEPTEMBER 22, 1994

TODAY THE SUBCOMMITTEE ON ENERGY WILL CONSIDER THE VITAL ISSUES OF SAFETY AND HEALTH PROTECTION AT THE DEPARTMENT OF ENERGY.

SECRETARY O'LEARY AND ASSISTANT SECRETARY O'TOOLE ARE UNDERTAKING STRATEGIC INITIATIVES TO UPGRADE DOE'S OCCUPATIONAL SAFETY AND HEALTH PROGRAMS. IN ADDITION, THE DEPARTMENT IS TAKING STEPS TO STRENGTHEN ITS NUCLEAR FACILITIES SAFETY PROGRAM.

WE COMMEND THE SECRETARY AND DR. O'TOOLE FOR THESE IMPORTANT EFFORTS. THE SUBCOMMITTEE ON ENERGY HAS AN ONGOING INTEREST IN HELPING TO ENSURE THEIR SUCCESSFUL IMPLEMENTATION.

IN ADDITION TO DR. O'TOOLE, THE SUBCOMMITTEE TODAY WELCOMES MR. JOHN CONWAY, THE CHAIRMAN OF THE DEFENSE NUCLEAR FACILITIES SAFETY BOARD, MR. JIM WELLS FROM THE GENERAL ACCOUNTING OFFICE, AND MR. SHELDON SAMUELS FROM THE AFL-CIO WORKPLACE HEALTH FUND, WHO WILL GIVE US THEIR VIEWS ON SOME OF THE KEY PROBLEMS THAT MUST BE ADDRESSED.

Mr. FAWELL. I thank Madam Chairman. I don't have any in-depth remarks. I note that we have Secretary O'Leary and Secretary O'Toole and that Irish group ought to be able to do something about these problems that we have. And I realize that we are facing enormous health and safety challenges and look forward to the testimony that is forthcoming.

Mrs. LLOYD. Thank you very much.

Unfortunately, due to the press of business, we are all supposed to be about two or three places at the same time right now. I will not be able to stay for the remainder of the hearing. But I am delighted that my distinguished colleague on the subcommittee, Mr. Inslee, from the State of Washington has kindly agreed to my request that he chair this hearing.

I would like to state that Mr. Inslee has been a very active and constructive partner and a participant in the work of the Energy Subcommittee in the last two years. He has attended our hearings. He has Chaired hearings. He has worked hard for his district and for our country. He has a very strong concern with the DOE complex and the health and safety issues that are before us today. I commend him for his leadership on these issues, especially on the issue of environmental cleanup. I know he is going to provide capable and thoughtful leadership in this oversight hearing.

I thank all of you for being here and now Mr. Inslee will chair the hearing.

Mr. INSLEE [presiding]. Thank you, Madam Chair. I would make a few comments before I start, if the Chairman would allow me, because we do have a broad gamut to today's hearing.

In the past year, we have outlined a record of substantial workforce and public health and safety concerns as well as significant problems at DOE defense facilities. These problems accumulated, of course, over a period of decades, and we will be dealing with them for a period of decades.

During the Cold War, the Department of Energy and the predecessor agency, the Atomic Energy Commission, successfully carried out their central mission of weapons production and we can take pride in their achievements.

Today, however, the post-Cold War era, we see this focus on production resulted in less attention to other situations that also need leadership. We see that DOE didn't pay enough attention to protecting workers from the risks of injuries and illnesses to which they were exposed at the weapons complex. The DOE did not exercise the necessary stewardship in its protection of the environment.

As a result, we and future Americans are now confronted with a multi-billion dollar cleanup legacy. The thousands of workers who will be involved in carrying out this long-term environmental restoration and waste management effort now under way in the Nuclear Weapons Complex face hazards even greater than those of operating the production facilities in the past. These areas include those normally associated with construction work, such as industry accidents and fires, as well as exposure to toxic chemicals and radioactive materials at aging and deteriorating production facilities and waste disposal sites.

Shortly after she was confirmed last fall as the DOE Assistant Secretary for Environment, Safety, and Health, this subcommittee met with Dr. O'Toole in a hearing on these issues. At that hearing, as well as in her previous work for the Congressional Office of Technology Assessment, Dr. O'Toole displayed a keen understanding of the problems she faced and the need for significant reforms.

Today we are looking for a progress report. We want to assess: What has the department achieved; where are we going; what still remains to be done?

We have several key questions that I hope Dr. O'Toole can help us with. First, what steps is the department taking to upgrade its capabilities in the areas of health and safety protection? What is the department's strategy in that regard?

Second, what tangible progress is the department making in strengthening health and safety protection, especially in connection with cleanup activities at the Nuclear Weapons Complex?

Third, what progress is the department making in ensuring the safety of DOE defense nuclear facilities?

And finally, what progress is the department making in carrying out its statutory responsibilities to provide medical monitoring of workers at DOE facilities?

These are important issues. Our task of cleaning up and resizing our facilities presents complex problems of large-scale strategic planning and organization. At the same time, we have to pay attention to the day-to-day execution of many detailed tasks. This is indeed a very challenging assignment, and we look forward to comments from our excellent panel on how we are doing in that regard.

Our first witness is Assistant Secretary Dr. O'Toole. Dr. O'Toole, of course, serves as the principal advisor to the Secretary of Energy in matters relating to the protection of the environment, workers, and the public from hazardous DOE facilities and operations. Her office is responsible for ensuring that the department's activities conform with all applicable environmental safety and health laws and requirements.

We welcome all our witnesses, and I would advise all the witnesses that their written testimony will be included in the record in its entirety and they may summarize, of course, with an oral statement. If they want to offer additional written statements, we will keep the hearing record open for 10 days after this hearing. With that, Dr. O'Toole, welcome. And would you please proceed.

[The prepared opening statement of Mr. Inslee follows:]

THE HONORABLE JAY INSLEE
OPENING STATEMENT

Hearing on
"Department of Energy
Health and Safety Strategy"
September 22, 1994

This afternoon, the Subcommittee on Energy will focus on the problems of protecting safety and health at Department of Energy facilities and environmental cleanup sites.

This Committee's past hearings have outlined a record of substantial workforce and public health and safety concerns as well as massive environmental problems at DOE defense facilities. These problems accumulated over a period of decades, and we are likely to be dealing with them for decades to come.

During the Cold War years, the Department of Energy and its predecessor agency, the Atomic Energy Commission, successfully carried out their central mission of weapons production. We may take pride in their achievements on behalf of the Nation's defense.

Today, however, in the post-Cold War era, we see that this focus on production resulted in less attention to other situations that also needed leadership. We see that DOE did not pay enough attention to protecting workers from the risks of injuries and illnesses to which they were exposed at the weapons complex. And DOE did not exercise the necessary stewardship in its protection of the environment.

As a result, we and future Americans are now confronted with a multi-billion dollar cleanup legacy. The thousands of workers who will be involved in carrying out this long-term environmental restoration and waste management effort now underway at the Nuclear Weapons Complex face hazards even greater than those of operating the production facilities in the past. These hazards include those normally associated with construction work, such as industrial accidents and fires, as well as exposure to toxic chemicals and radioactive materials, at aging and deteriorating production facilities and waste disposal sites.

Shortly after she was confirmed last fall as the DOE Assistant Secretary for Environment, Safety, and Health, this Subcommittee met with Dr. Tara O'Toole in a hearing on these issues. At that hearing, as well as in her previous work for the Congressional Office of Technology Assessment, Dr. O'Toole displayed a keen understanding of the problems she faced and of the need for significant reforms.

Today we are looking for a progress report. We want to assess: What has the Department achieved? Where are we going? And what still remains to be done?

We will examine several key questions:

First: What steps is the Department taking to upgrade its capabilities in the areas of health and safety protection? What is the Department's strategy?

Second: What tangible progress is the Department making in strengthening health and safety protection, especially in connection with cleanup activities at the Nuclear Weapons

Complex?

Third: What progress is the Department making in ensuring the safety of DOE defense nuclear facilities?

And, finally: What progress is the Department making in carrying out its statutory responsibilties to provide medical monitoring of workers at DOE facilities?

These are important issues. Our task of cleaning up and re-sizing our facilities presents complex problems of large-scale strategic planning and organization. At the same time, we must pay attention to the day-to-day execution of many detailed tasks. This is indeed a very challenging assignment.

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[RECOGNIZE OTHER MEMBERS FOR OPENING STATEMENTS.]

STATEMENT OF TARA O'TOOLE, M.D., ASSISTANT SECRETARY FOR ENVIRONMENT, SAFETY AND HEALTH, U.S. DEPARTMENT OF ENERGY

Dr. O'TOOLE. Thank you. Thank you, Mr. Chairman.

With your permission, I would like to make about 15 minutes' worth of opening comments. The topics that I understand the committee is most interested in today have to do with the proposed reorganization of my office, the Office of Environment, Safety and Health, medical surveillance programs, as you mentioned, for current and former workers at DOE defense facilities, and matters related to nuclear safety. I would propose to discuss these topics, as well as transition to regulation by the Occupational Health and Safety Administration. In turn, I am happy to answer any questions on any other subjects that you might have an interest in.

Let me say by way of background on the reorganization of the Office of Environment, Safety and Health that what we tried to do was design an EH that was responsive to the new demands, some of which you mentioned, and responsibilities incumbent upon the DOE.

What we face are changing missions, including transition from weapons production to cleanup, new and growing challenges to safety, which I will detail in a moment, a limited number of technically qualified staff, both in my office and in the line programs, as the defense board has aptly and repeatedly pointed out, and a less than ideal skill mix, particularly in the Office of EH, for meeting these new challenges.

The reorganization was not, let me assure you, an exercise in designing the ideal office for environment, safety and health or the ideal way, in a perfect world, one might oversee the adequacy of DOE's environment, safety and health programs. It is an honest attempt to confront the realities of DOE's current situation and to effectively leverage the expertise in our office against the needs and the problems faced by DOE and contractor line programs.

Let me just list some of the realities that we have to grapple with in the next several years if we are going to be successful. As the Defense Nuclear Facilities Safety Board has said, and I agree with this, the weapons complex in particular is getting more dangerous. This is so because of the huge inventories of hazardous materials we harbor. We have over two million kilograms of reactor irradiated materials stored all over the complex, often in conditions never intended for long-term storage.

We are husbanding aging facilities that have not been well maintained and present safety problems of their own. We are confronting changing missions, some of which, such as decontamination and decommissioning, are quite hazardous. All of these changes are very tough on the morale of the people who have to work in our plants. And whatever union jurisdictions are ultimately determined to apply, we are going to be fielding a new generation of workers who are less familiar with the plants as they were built, the hazards they contain, and the way they were traditionally operated.

In addition, the Safety Board and others, including the GAO and OTA, have repeatedly noted that DOE line programs, field offices, and EH lack sufficient numbers of Federal workers with the technical expertise in the health and safety fields that would ideally be used to carry out our missions.

In EH, we have very many good people, perhaps not in the numbers we would wish. We certainly don't have the proper skill mix to deal with such new challenges as medical surveillance.

The safety board has observed that in many nuclear safety specialties where DOE and its predecessor agencies were once the undisputed world leaders, we now are lacking necessary talent because of retirements, program cuts, and budget constraints.

I would suggest that the situation is even worse in safety areas that have been relatively neglected by DOE; namely, construction safety, worker training, chemical safety, and so forth.

Now, many of us have spent the past few years reading and in some cases writing volumes of critiques of environment, safety and health programs of the Department of Energy. Yet in spite of whole libraries of excellent reports on what is wrong, progress in improving safety at DOE facilities, though real, has been slow.

Given all the hazards and conditions that exist at DOE that I have just described, Secretary O'Leary and I have concluded that if we are going to succeed in preventing bad things from happening in the coming years, rather than reacting to events, we must do more to improve safety. We must quicken the pace of change in how we manage health and safety. We must, in short, change the way work is done at DOE. We must make it safer.

This is the goal to which we aspire. This is the premise on which the EH reorganization was based. That is, again to repeat—and I am going to repeat this a lot, we must change the way work is done at DOE facilities so that the safety of workers and the public is assured and threats to the environment are minimized.

To do this, I firmly believe that the staff of the Office of Environment, Safety and Health must get out of our offices in Washington and get into the field. We have to be more visible and we have to have more of a hands-on understanding of what problems the line programs face.

So to get to the outline of the proposed DOE reorganization, which I would like to emphasize is not yet final, we are still conducting negotiations which have been very productive and cordial, I might add, with the National Treasury Employees' Union, and even after we formally reorganize we intend to continue these discussions so as to optimize the needs of our staff and the interests of the union with those of the management.

I am going to talk about two aspects of the reorganization; namely, oversight and technical assistance. The reorganization calls for a much revamped, very strong oversight office, the purpose of which is to conduct evaluations and assessments that will provide a valid and comprehensive understanding of the health and safety programs at Department of Energy sites.

Oversight should also help managers identify trends and vulnerabilities in health and safety so that we can recognize oncoming trains before they run us over. In order to do this, we are going to put in place formal protocols for doing oversight so there is no confusion about what our expectation is or how we are going to assess people or what was discovered.

The reorganization provides more separation between oversight and assistance activities than has been the case in the past, which I will come back to. It also calls for an institutionalized integrated multidisciplinary assessment.

In the past, what we have done is sequential field evaluations of security, occupational medicine, nuclear safety, electrical safety, radiation protection, so on and so forth. What we are proposing to do is to integrate all of these into much more comprehensive multidisciplinary approaches that I think will be more efficient and less burdensome to the field and will also provide managers with information that is a lot more useful to them and certainly more timely.

The new oversight function will have more clout. It is going to have its own deputy assistant secretary dedicated to oversight, as well as an associate deputy assistant secretary. These people are very experienced senior managers from my office and are quite capable of doing this job, which will no longer be divided between technical assistance, oversight and policy, as has been the case in the past.

The oversight office will have the authority to do unannounced inspections as the Secretary made clear last summer. It will be able to carry out type "A" investigations of serious accidents and injury independent of the line organizations. We will double the number of EH site representatives who work at our facilities and are effectively the eyes and ears of our day-to-day bird-dogging of operations in the field, and we will increase this year by 50 percent the number of sites that have EH site representatives. In addition, we intend to greatly augment our ability to collect and process information and translate it into knowledge that is useful to and used by the field.

Technical assistance. First, let me make clear—I think there has been a lot of misunderstanding about this. The assistance function is not new. Technical assistance has always been an integral part, both of the Office of Environment, Safety and Health functions and of the former Office of Nuclear Safety. We have always put out operational guidance and standards interpretation, and got involved in on-site assistance for special projects, such as the Office of Nuclear Safety's review and advice to EM on tank waste remediation.

We have conducted 11 safety workshops and the like. An examination of past staffing and budget patterns for EH in the Office of Nuclear Safety shows that a substantial proportion of monies and people's time were spent on oversight activities. What is new is the attention we are giving in terms of focus and formality to technical assistance in the new organization, and we are doing this, again, because we believe it is imperative to change the way work is done at DOE now, this year, in the short term. We have to empower managers and workers and instill in them a sense of pride and capability.

Again, this is a discouraged, change-weary work force at this point, at least in part. And we are intending with our assistance efforts to put a particular focus on our field office staff in our efforts to teach them how to capably manage their health and safety programs. To repeat, the goal of technical assistance is to empower managers to perform ES&H functions responsibly at a higher level of effectiveness.

There are many examples of assistance programs we have initiated since I last appeared before this committee. One of them is the partnership with the Office of Environmental Management, the purpose of which is to formulate and put on the ground health and safety programs for cleanup workers. And by that I mean the whole gamut of people who do everything from environmental characterization and restoration, to waste management, to D&D projects. To put on the ground programs that translate the OSHA requirements for hazardous waste work into real, effective and adequate programs.

We have already been to the field to pilot three of these programs. We are going out to the field again to see what works and what doesn't. By the end of 1994, we will have guidance on what a good, adequate health and safety program for cleanup workers looks like. And then early in 1995, we are going out into the field with EM, again, to establish working projects that we hope will become models for the rest of DOE thereafter.

Another example of an assistance effort is the Hanford tank farm mentoring program. When Louis Beatty was killed at the tank farms over a year ago, EH started pouring resources into Hanford. We sent over a dozen senior members of our staff out there to try and bootstrap the tank farm safety programs into a more—to improve them. Let's leave it at that.

After about six months, we were all very discouraged. In spite of this expenditure of resources, it wasn't clear that we were making a lot of progress. And then we started learning how to do this. And I think now everyone would agree that the mentoring program has made significant improvements in the conduct of operations at the tank farm. It has helped the field office understand how to put together an adequate "lessons learned" program at the tank farm. It has improved worker training functions at the tank farm. In short, it is working.

One measure of how well it is working is the fact that the Westinghouse Hanford Corporation has asked us to expand the mentoring program into other aspects of Hanford operations and has also asked us to do the same thing at the Idaho National Engineering Lab, and we have requests to do mentoring at other sites in the DOE complex. More requests than we can meet, by the way.

A third example, but by no means the only example—additional example of assistance programs are the vulnerability studies. The spent fuel vulnerability study was completed last fall. This was a DOE-wide effort led by the Office of Nuclear Safety that resulted in significant changes in budgets and priorities, particularly in the environmental management program.

We have completed a vulnerability study of chemical safety, which the Secretary will release some time next month, and we are in the final throes of the plutonium vulnerability study, which is probably the biggest assessment ever done at DOE of a single subject, and I think it will be extremely useful to the line managers in assessing, understanding, and managing the legacy of plutonium that we have left in the weapons complex.

Let me say that we are and we have been very aware of the potential for conflict of interest between oversight and assistance efforts. In fact, the irony behind much of the consternation that has been talked about in health and safety circles regarding assistance projects is that we specifically redesigned the reorganization to address those conflicts of interests. As I said, in the past, policy development, assistance and oversight were all done by the same DAS. We are now separating those out into separate offices. Enough on the reorganization for now.

Let me move to medical surveillance. As you know, the Defense Act of 1993 requires DOE to provide a medical monitoring program for all current and former workers at defense nuclear facilities. And I am going to talk separately about current and former workers because these programs are conceptually and operationally quite different.

To take current workers first. The real value of a medical assistance program is to prevent disease, and this is accomplished by, first of all, identifying the hazards associated with the particular job and then measuring the exposures associated with those hazards.

Quickly getting that information into the hands of people who can interpret it and then turning it around back to the line managers, back to the people on the plant floor, so that as soon as you see dangerous exposures, or even increasing exposures that look problematic, you redesign the job and drive down exposures. That is the real goal in the medical surveillance effort. That works.

Now, the plan that was in place for medical surveillance at DOE, the plan that the General Accounting Office reviewed, wasn't going to accomplish this, at least not in the immediate future and not without a very significant infusion of money. And that was because the focus was on the subsequent steps in medical surveillance, i.e., medical monitoring and epidemiologic analysis, as well as the development of computer hardware needed to tie all of this information together from around the whole weapons complex.

We are significantly retooling this approach. What we are doing is aimed at establishing real and adequate medical surveillance programs on the ground. We are not going to produce a Cadillac without wheels, which I think is where we were headed. Instead, we are going to produce a Ford Escort that runs. We are going to have a much more focused target of implementing hazard analysis and exposure assessment, again, similar to the EM initiative with pilots that established models that the rest of DOE can learn from and apply at their own sites.

We will grow into medical monitoring and epidemiological analysis as reliable exposure information becomes available, and we are not waiting to do this but there will be a very different emphasis from the program that GAO reviewed.

As to former workers, this is harder. Secretary O'Leary and my colleagues, Tom Grumbly and Vic Reis and others at DOE and I fully recognize our obligations to the Cold War warriors who worked in our defense plants through the past half century. And we are determined, I am determined to get a program in place that will address the medical needs of former workers.

But I must be frank with you. There really is, I can assure you, a great deal of contention about what is involved in meeting the mandates of the 1993 Defense Act in this regard. There are questions about whether we are talking about the provision of lifetime medical care to these workers, whether we are talking about high-risk notification, whether we are talking about monetary compensation for past exposures or whether we are talking about a targeted medical monitoring program keyed to past exposures. All of these questions have to be aired and fleshed out.

I have asked the Keystone Group to very quickly get together a facilitated program over the next few months to identify areas of commonality amongst the different unions and stakeholders, as well as to highlight differences. We are not looking for Keystone to help us reach consensus among these groups and I do not have in mind a long and elaborate deliberation process. What I want to do is get the issues on the table and this year establish at least the beginning pieces of a program that addresses the former workers. This program should be effective, and it should be doable.

To move now to nuclear safety, this is obviously a very important, very broad realm of interest for us. I am going to speak today to just one issue, which I believe the Defense Nuclear Facilities Safety Board has rightly highlighted and focused on, and that is the identification, development, and implementation of those requirements needed to assure safety.

Now, some people think this is a dry, boring topic. Let me assure you that it isn't. And if you will forgive me, I am going to spend two minutes explaining what we are talking about when we talk about nuclear safety standards, and indeed safety standards more generically, because it really is critical to all we do.

Most of the world we know, certainly the high hazard private sector world of commercial nuclear power, the petrochemical industry, operates on what we could call a standards-based safety culture. This means that there are clear, expressed, usually written-down expectations or standards for the performance of work. And when one is operating and working in accordance with these appropriate standards, and when you can document that work is being conducted this way, one is assured of working safely. That is the whole purpose of a standards-based culture.

Now, DOE historically has not been and is not now a standards-based safety culture. Our focus has been on product specification, that is, producing high-quality nuclear weapons, which, as the Chairman has noted, we have done well, and not on standards describing work practices.

The security compartmentalization of the DOE over the years has encouraged a strong culture of institutional reliance on expert-based opinion and, indeed, different groups of experts at different sites have evolved different ways of doing work. This expert-based approach has avoided major disasters and, indeed, has been quite successful in identifying and dealing with high-hazard situations.

It hasn't been so successful in dealing with the moderate hazards, such as construction safety issues, and construction fatalities have accounted for half of all the fatalities since the dawn of the agency, or hazards such as environmental pollution, the legacy of which we are now grappling with throughout the weapons complex.

In addition, the insularity of the weapons complex and the isolation of these operations from private-sector developments in health and safety has frozen DOE in some decades-old approaches to safety. We have, for example, been slow to adopt more progressive and proven methods, such as behavior-based safety.

Now, the Defense Board has been hammering, politely, but nonetheless has been resolute in its demand for a standards-based culture since its inception in 1989. The board is frustrated by the slow pace of progress and so am I and so is Secretary O'Leary.

Last February, Secretary O'Leary clearly signaled her commitment to move to a standards-based culture in a memo sent out to all of the program and field offices. But we have to look at why progress has been so slow.

First of all, there is no question, and there is no sense in denying this, that there is resistance to a standards-based culture at DOE. I think this is largely because people do not understand the value and inherent efficiency of this approach to safety. There is also a fear of the cost of converting to standards-based work in times of serious budget constraints. I think this is a misplaced fear and, again, based on a misunderstanding of what is intended, and it is also due to DOE's failure to learn from past efforts at standards implementation and spread these lessons from one site to the next. Nonetheless, the perception on the part of managers facing budget cuts that standards implementation is very expensive has to be dealt with.

There are also real and difficult questions involved in standards implementation. We need to figure out and put on paper what constitutes the necessary and sufficient standards at defense nuclear facilities. This is especially difficult at facilities such as Purex or the plutonium finishing plant which are moving into a new stage; namely, the decontamination and decommissioning stage and operations for which we do not have a long legacy of experience. These are perfectly solvable questions but we need a process to address them and come to consensus on how we are going to move forward.

There are many standards activities going on at DOE largely thanks to the board's initiative. But there is little coordination or effort to take the best practices in hand and spread them across the complex.

In addition to the memo I just noted, Secretary O'Leary has also authorized me to lead an effort to promote and coordinate standards activities through DOE, and the agency that we are using to do this is called the Departmental Standards Committee, which has membership from high levels across DOE, is chaired by me, and staffed by the Office of Nuclear Safety.

The purpose of the Departmental Standards Committee is, again, to move the department towards standards-based planning and to change the way we work at DOE by a step-by-step resolution of problems and barriers cited by the field and communication and implementation of the most effective solutions across DOE. The Departmental Standards Committee is not going to delay work that is already under way. I think it is a very promising approach.

We have had terrific participation and enthusiasm thus far. We have had four meetings thus far on a monthly basis and we are making real progress, I believe, already in the field because of the communication vehicle this provides. It is not magic, but I think it is a reliable way, again, to change the way we do work in DOE.

Moving now to oversight by the Occupational Safety and Health Administration. Secretary O'Leary announced her commitment to subjecting DOE to OSHA oversight in May of 1993, and last fall I reaffirmed that commitment before this committee and added my own belief that this was the way to go.

The external enforcement of health and safety activities at DOE will provide us a validation of our programs' adequacy that I think is essential in winning back our credibility. And our credibility is essential to future projects being successful.

With the end of the Cold War, there really are, in my mind, no valid reasons why the department should not be subject to the same occupational health and safety standards as the private sector and the same oversight that the private sector experiences.

I have met with Assistant Secretary Dear on a number of occasions. Our staffs have been meeting and we are working with OSHA to develop strategies that will facilitate the transition process. And I can tell you more about this in a minute. Let me say, though, that as an occupational medicine physician, it is certainly not my intention nor would I tolerate any activity or any action by DOE that would seek to harm or imperil OSHA.

Certainly, OSHA has its plate full at the moment and we have no intention of simply dumping DOE in their hands or otherwise imposing our problems on them in a way that would not serve worker health and safety protection. And one of the key things that we have got to work out and Mr. Dear and I recognize this, is how OSHA would be provided with sufficient resources to take on DOE.

Now, simply transferring monies and people from DOE to OSHA won't improve worker health and safety protection, either. And I think the country has to start thinking about whether the immediate costs of providing external regulation of worker health and safety at DOE is worth the investment. I think it is, particularly in view of the external costs that I believe are certain to accrue if we don't have this kind of outside regulatory oversight.

And as I said, we are working with OSHA to flesh out this problem and we are planning, that is, DOE and OSHA are planning over the next year to conduct a thorough study that DOE would pay for that will produce in the end a plan with milestones and options that will transition us from independent authority in health and safety matters to regulation by OSHA.

I think I will stop there, Mr. Chairman, and if you have any questions, I would be happy to answer them.

[The prepared statement of Dr. O'Toole follows:]

Statement of

Tara O'Toole, M.D., M.P.H.

Assistant Secretary for Environment, Safety and Health

Committee on Science, Space and Technology

Subcommittee on Energy

U.S. House of Representatives

September 22, 1994

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to appear here today to discuss the safety and health challenges that face the Department of Energy as it shifts its focus from nuclear weapons production to environmental cleanup and restoration. There is no question that these challenges are daunting. Under the leadership of Secretary O'Leary, however, we have begun to put in place improved mechanisms that can more quickly identify health and safety problems at the DOE facilities. The Office of Environment Safety and Health (EH) is now in a position to commit its technical expertise and resources to correct problems or, better yet, prevent them before they become serious health and safety issues -- in other words, the Office of Environment Safety and Health is now focused on making DOE and its facilities safer.

Safety and Health Challenges at DOE Nuclear Weapons Complex

In the coming years, the Department of Energy faces unprecedented challenges in protecting worker safety and health, especially at its nuclear weapons complex. It is estimated that the multibillion dollar, decades long cleanup of environmental contamination from nearly 50 years of nuclear weapons manufacture will require tens of thousands of workers at some 14 sites. The men and women assigned to this cleanup -- scientists, engineers, technicians, and laborers -- will be pioneers in the true sense of the word. They will be defining a new industry, one devoted to site characterization and environmental restoration. Their jobs will range from design and construction of specialized remediation projects to the operation of earth-moving equipment and packing of waste drums. Others will be plant operators, maintenance personnel, and technical experts at vitrification plants and incinerators.

In addition to facing the more conventional hazards associated with construction, workers may encounter fire and explosion hazards, health threats associated with exposure to toxic chemicals and radiation, stress-related illnesses associated with the uncertainties of their tasks, and other hazards, such as high-level radioactive waste and mixed waste, unique to the DOE facilities.

Many workers will be working in aging and deteriorating facilities that were never intended for long-term storage of toxic or radioactive materials. For many of these facilities, we lack reliable data, such as how buildings were constructed, what materials were left in processing equipment, the nature of past uses, inventories of hazardous materials, or the status of systems vital to safety such as electrical and ventilation systems.

Many workers and managers who will be involved in the cleanup effort are not prepared for the hazards they will confront. While highly skilled and expert at weapons production, workers are now being asked to take on entirely new tasks in environmental restoration and structural decontamination and decommissioning -- and to do so in times of limited budgets and demanding compliance schedules. At the same time, a new generation of workers is entering our workforce as those who peopled DOE plants and laboratories during the Cold War near retirement.

As DOE turns its attention to environmental restoration and waste management, we commit to providing safe and healthful working conditions for these men and women. The challenge of that commitment becomes clear when you consider the following:

- DOE owns and is housing more than two million kilograms of spent nuclear fuel and other reactor irradiated target materials. As was pointed out in the November 1993 report of the DOE Spent Fuel Working Group, much of this material is stored in conditions that are not suitable or safe in the long term. Some facilities are more than 40 years old; many do not meet today's requirements for safety.
- A soon-to-be-issued report from DOE's chemical safety vulnerability working group found that DOE operations have left a serious legacy of chemical safety problems -- problems which threaten serious unplanned chemical reactions, worker exposures or hazardous chemical releases.
- A third working group -- involving more that 100 DOE and contractor staff along with 40 outside stakeholders -- is currently looking at safety and health issues associated with DOE's

plutonium holdings at various sites and will identify conditions that could result in radiation exposure of workers or the public or release of radioactive materials to the environment. The group has evaluated 200 facilities at 13 DOE sites and expects to issue its final report and management action plan in October.

While these three studies -- spent nuclear fuel, chemical safety, and plutonium vulnerability -- each deliver a sobering message, they also move closer to finding solutions by presenting managers, for the first time, with a comprehensive, cross-cutting view of safety and health issues associated with our hazardous materials inventories. This type of "big picture" perspective on our own environment, safety and health vulnerabilities is essential assistance to managers who plan the budgets and set the priorities that will lead to comprehensive solutions.

This trilogy of reports represents a new approach to the Department's environment, safety and health problems. Each is the product of an unprecedented working group that involved not only technical experts from the Office of Environment, Safety and Health, but also program officials at DOE headquarters, staff of the DOE Field Offices, and the contractors operating our facilities. The thoroughness of each report, along with the ability to complete the studies in a very tight timeframe, demonstrates that the institutional descendent of the Manhattan Project can marshal its technical expertise to procure valuable and credible information needed for effective policy making.

I note that each report is accompanied with a management action plan that maps out a site-by-site strategy to eliminate existing vulnerabilities and prevent their recurrence. The action plans from the spent fuel report are already being implemented.

A New Approach to Safety and Health at DOE

Under Secretary O'Leary's leadership, I believe we have brought together several factors that have laid the groundwork for a new approach to protection of worker and public health and safety and environmental integrity at the Department of Energy.

As a first step, the Secretary in June 1993 realigned major elements in DOE. This included the consolidation of several heretofore scattered safety functions, including the Office of Nuclear Safety, into the Office of Environment, Safety and Health.

A second achievement action has been the development of a strategic planning process at the Office of Environment, Safety and Health. We now have a plan that sets forth our goals and provides clear milestones and measures of progress. This plan is aimed at targeting the expertise and resources at EH on a commitment from the Secretary, myself, and all secretarial officers to make DOE safer.

The third action is a proposal -- that grew out of the strategic planning effort -- to reorganize the Office of Environment, Safety and Health. Under this plan we would create a new office at the Deputy Assistant Secretary level that is dedicated solely to conducting independent oversight of DOE facilities. The revised EH organization is designed to more effectively help line mangers prioritize and resolve their ES&H problems.

Together, our strategic planning and organizational changes are helping us transform the EH organization to its newly-defined role as a corporate resource for the Department of Energy focused on its goal of making DOE safer.

With this background, I'd like to take a few moments to discuss the main purpose and activities of the Office of Environment, Safety and Health and to note a few examples of success stories.

The Critical Role of Independent Oversight.

It is a basic tenet of our organization that strong, independent oversight is critical to protection of environment, safety and health at DOE facilities.

The Department's status as a primarily self-regulated entity imposes upon it a particular burden to perform effective and independent oversight. The purpose of oversight is to determine the status of DOE line programs' and contractors' performance in environment, safety, health, safeguards and security; compare performance to expectations; and identify trends, problem areas and priorities requiring attention or improvement.

The Secretary, the Congress, and the public depend upon EH oversight to provide an accurate and unbiased view of the effectiveness of environment, safety and health programs and identification of conditions that could endanger the health and safety of the workers at our facilities or the public. For oversight efforts to be effective, they must be -- and must be perceived as being -- independent of the line management that is ultimately responsible for health and safety oversight assessments and analyses. They must be technically valid, and carried out according to protocols that evaluate existing programs against clear and explicit expectations for performance.

The proposed reorganization of EH will help assure this strong oversight role. We would combine all of our field appraisal and audit functions from several different offices and establish, for the first time, a separate office reporting directly to the Assistant Secretary that is dedicated to these activities. This will be a fundamental change from our current structure, under which several EH offices -- each responsible for some type of field appraisals -- are also responsible for developing policy, conducting training, and providing line mangers with technical assistance.

The oversight office will include an expanded site representative program made up of independent EH personnel permanently onsite at major DOE facilities. Their job is to review, on a daily basis, the performance of operators and managers in meeting their safety and health responsibilities. They will be the "eyes and ears" of the oversight program and a critical part of the Secretary's initiative for enhanced safety and health.

In addition to the site representatives, the oversight office will conduct field assessments covering such areas as: nuclear safety; worker health and safety; environmental compliance; occupational medical programs; and the safeguards and security program. But, instead of the multiple, sequential assessments of the past, the office will focus on multidisciplinary assessments that look at the full range of environment, health and safety aspects of a site. These assessments will be both more efficient and more useful to line managers.

It is important to recognize that oversight alone will not fix problems. The identification and description of hazards or deficiencies must be linked to mechanisms that hold contractors and federal managers accountable for remedying these problems. EH has been vigorously engaged in a number of activities designed to ensure clear accountability for environmental, safety and health performance at DOE facilities.

One such activity is the implementation of a three-year budget tracking plan that follows environment, safety and health expenditures of the line programs. Previously, this kind of information was buried in the details of the program budgets, mostly under the rubric of "overhead." Since overhead accounts are the first to feel the pressure of constrained budgets, ES&H projects were often cut or diminished with minimal headquarters review or knowledge.

This year, for the first time at DOE, EH was able to present a complete analysis of where their high priority ES&H dollars are being spent, facility by facility. At the recent DOE budget summit, the Secretary used the data from this system to shift significant resources to what would have been unfunded safety and health activities.

Contract reform is another key mechanism by which the Department intends to hold management accountable. As we implemer the DOE-wide contract reform effort, we will put in place contractual language that specifies environmental, safety and health performance standards to which we will be able to hold Federal and contract managers accountable. In addition, we are starting an effort to devise performance measures that gage Federal employees' effectiveness at controlling accidents and workplace exposures.

Giving Managers and Workers the Health/Safety Tools They Need

As I noted earlier, the Department of Energy faces extraordinary environment, safety and health challenges at its facilities. The state of many decaying facilities, the quantities of hazardous inventories, and the threats these pose to worker and public safety leave little time to devise solutions.

The Defense Nuclear Facilities Safety Board has repeatedly indicated that DOE line programs at headquarters and in the field lack the technical management expertise needed to ensure safe management of nuclear facilities. This lack of technical know-how exists across the spectrum of occupational health and safety and public health disciplines. The Department recognizes the critical importance of having competent people in positions responsible for managing health and safety and has taken steps to implement an ambitious training program as set forth in the implementation plan for Defense Board recommendation 93-3. We are also developing explicit measures by which to gauge Federal managers' performance in managing safety and health programs. In addition, DOE is committed to hiring the best available technical talent.

Over time, all of these actions will improve the quality of health and safety expertise in the line programs. In the meantime, however, we must deal with the array of serious safety challenges now before the

Department. The challenges we will face span a broad spectrum -- from electrical and construction safety to hazardous materials exposure and implementation of nuclear standards. It is impractical, if not impossible, for individual DOE line programs to hire the short-term technical management expertise needed to deal with the breadth of health and safety issues we must confront.

Simply put, if we are to meet our commitment to the thousands of workers over the next decade and make DOE a safer place, we will need to take full advantage of the environment, safety and health resources in the Department -- including the talents of those in EH and the line programs -- and then some. We need to view the expertise and talents of EH as a "corporate resource" that can be leveraged throughout the Department to help line management formulate workable solutions to pressing problems.

Over the past decade, EH has produced reams of paper that document problems at DOE sites While these are excellent reports that identify the problems, reports alone will not bring us to our goal of making DOE safer. EH must go beyond the mere documentation of instances of regulatory non-compliance or listing of deficiencies in worker protection practices and teach line managers, especially in the field, how to manage safety effectively. This is the rationale behind the reorganization of technical assistance within EH.

Let me make clear that technical assistance has always been an activity at DOE's Environment, Safety & Health and nuclear safety oversight offices. The Office of Nuclear Safety, the Office of Health, and the Office of Occupational Safety have always performed "assistance" functions that include review and discussion of corrective action plans, workshops, training programs and the like. Under the old organization, these offices carried out such assistance efforts while also conducting oversight. In the proposed organization, EH oversight tasks will be in a distinct office under the management of a Deputy Assistant Secretary separate from technical assistance activities. In addition, the proposed reorganization is designed to target assistance efforts on high priority problems and better leverage DOE's technical resources -- which currently reside mostly in EH -- against the needs of the line programs.

The essence of what we are calling technical assistance is helping managers understand what is intended by the DOE Orders and other environment, safety and health requirements. Such assistance includes more than written guidance on how compliance might be achieved and detailed documentation of technical specifications and standards. Assistance also includes hands-on worker training in such areas as hazard identification and, more generally, teaching the lines how they might take advantage of available science or the best management practices developed at other DOE sites or in the private sector.

I believe that this approach -- working cooperatively with line managers to identify problems and devise effective approaches to health and safety issues --has produced significant progress over the past eighteen months. The spent fuel, chemical and plutonium vulnerability studies mentioned earlier are examples of the kind of assistance efforts that link EH expertise with program managers. The result is that managers have the quality information they need to manage their programs and facilities, to set priorities, and to allocate resources.

Another example of how EH technical assistance can leverage resources to empower workers and achieve substantial improvements in environment, safety and health performance is the ongoing "mentoring" program at Hanford. We put the mentoring program in place when Secretary O'Leary identified the Hanford high-level nuclear waste tanks as DOE's number one safety problem. Under this initiative experts from EH are working side-by-side with the operators, teaching them the state-of-the-art methodology and then following up with guidance on their improvement.

We are currently optimistic above improvements in operational safety at the Hanford tank farm. By EH staff working cooperatively with mangers in the Richland Operations Office and with the contractor, existing programs have been strengthened and new initiatives have been launched that are having a clear, near-term impact on safety at the site.

Protecting workers at DOE's hazardous waste cleanup sites presents a critical challenge that is being met in an innovative partnership by EH and the Office of Environmental Management (EM).

This partnership, known as the Hazardous Waste Activities Worker Health and Safety Initiative, partners EH technical safety and health specialists with program counterparts. The goals of the program are two-fold: to benchmark how health and safety programs are to be carried out so as to best protect the workers; and to provide the necessary field assistance and pilot programs that will demonstrate "on the ground" effectiveness. Our plan is to deliver within the next several months Departmental criteria that will be put in practice at all DOE cleanup sites during this coming fiscal year.

Four months into the initiative, we can already see significant progress in several areas:

- For worker training, extensive discussions with training specialist at our sites, in academia, and with organized labor have led to initial agreement on how DOE will assure the quality, content, and transferability of health and safety training.
- For emergency response, DOE-wide capabilities to respond to accidents at cleanup sites have been surveyed and existing DOE requirements are being supplemented.

- We have partnered with EM's technology development program to assure that opportunities are pursued to advance the state-of-the-art in cleanup worker protection.

This initiative, like others I have mentioned, gives us the opportunity not only to save lives, but also to save considerable dollars -- dollars that otherwise would have been spent on complying with conflicting requirements, duplicative training, or unnecessary levels of protection.

Health Surveillance for Former and Current Workers

The Committee asked me to address the implementation of the health surveillance programs as required in section 3162 of the National Defense Authorization Act for Fiscal Year 1993. The legislation calls for a major program "for the identification and on-going medical evaluation of current and former Department of Energy employees who are subject to significant health risks as a result of exposure to . . . hazardous or radioactive substances. . . "

We are committed to both develop and implement programs that will meet the goals of section 3162. We also recognize that the massive nature of this task strains the resources of the Department and that it must reach out to build coalitions to the public health community. We have begun discussions with the National Institute for Occupational Safety and Health to better define our worker monitoring programs, and we are in the process of bringing on board a team of highly skilled public health professionals to administer this program.

For workers currently employed at DOE facilities, the number one priority is prevention of injuries and illnesses. We will insure that every worker and manager knows the hazards of each and every job, and that steps ar taken upfront to limit or eliminate hazardous exposures and to increase the safety of every job. We aim to achieve prevention in the field, on the ground, with a commitment to health and safety throughout the Department. Several pilot efforts are currently underway at cleanup sites that incorporate these prevention principles.

The Department's programs will emphasize medical surveillance, collecting the vital information on exposures and health outcomes that precipitate aggressive efforts to reorganize or re-engineer work tasks to reduce exposures. The tangible, cost-effective benefit of proper health surveillance is linking work tasks to exposures and using this inform to reduce risks before disease or biological efforts are evident.

We take very seriously DOE's responsibility for the hundreds of thousands of former workers who have worked in the nuclear weapons program under DOE and it predecessor agencies. Section 3162 gives us little guidance in addressing what will certainly be a problem of historic dimensions, involving ethical, medical, and economic issues.

To begin to address these issues, I believe we need the input of the full range of affected parties -- organized labor, public health professionals, Congress, and the public. All must participate in this effort defining our responsibilities to former workers; an effort that carries the potential for major financial and legal precedents in the way we as a nation treat those who believe they were harmed by participating in an historic endeavor. In order to obtain this input, we will be holding discussions this fall that will produce a program for implementation in FY 1995. We welcome the participation of the Members of this Committee as well as others in Congress in these deliberations.

Finally, Mr. Chairman, you asked that I bring the Subcommittee up-to-date on our work with the Occupational Safety and Health Administration (OSHA) to transition to external oversight of our programs. We are working with OSHA to explore and identify a way in which we could effect such a transition. In fact, the Department has begun the ambitious task of examining whether and how nuclear safety activities at the Department might be externally regulated. We hope that the role of OSHA would be a part of that discussion and consideration and have solicited Department of Labor representation on the Federal Advisory Committee being formed. We hope that this committee will be able to provide us with recommendations on how best to proceed. As I told the subcommittee last October, there are important reasons to seek independent, external enforcement of occupational safety and health standards and accountability of DOE operations. The issues associated with this transfer are much too complex, however, for us to transfer these responsibilities without assuring that there are adequate resources to carry them out. We are continuing discussions with the Department of Labor and would hope to come forward with a specific proposal in the near future.

I appreciate the opportunity to discuss these issues today and would be happy to answer any questions from the Committee.

Mr. INSLEE. Thank you, Dr. O'Toole.

We do have some questions. Duties call at the Floor so we would intend to recess for 15 minutes or till the return of the Chair, whichever comes first. We hope it wouldn't be any longer than that.

Dr. O'TOOLE. Okay.

Mr. INSLEE. We hope that the interested parties will be patient with democracy.

Dr. O'TOOLE. Thank you.

Mr. INSLEE. Thank you. We will be in recess for 15 minutes.

[Brief Recess.]

Mr. INSLEE. I am going to bring this hearing back to order. And Dr. O'Toole, thank you for your gracious wait for the wheels of democracy. We appreciate it.

I have some questions, and you have provoked many thoughts and I hope you can help us out. If I can start, maybe it is appropriate, but let me start parochially at Hanford because this is an issue I am of course interested in, and that is the issue of how we start the hands-on, performance-based, behavior-based safety project. Of course, the HAMMER[1] Project is one we think holds promise in that regard. And I would just like your comments in that regard and how you see HAMMER fitting into the overall plan as far as your new organizational structure.

Dr. O'TOOLE. Okay. Behavior-based safety, to start there, I think is a very exciting approach to improving safety in workplaces. It has been kind of renamed and regarbed. It is hard to say that it is a new approach. But I think it has gotten increased attention in recent years.

And the basic premise is that you start looking at the behaviors that lead to accidents and intervening to change those unsafe behaviors. An examination of any accident usually reveals that there were hundreds, if not thousands, of unsafe behaviors that were committed long before visibly bad things occurred. The idea is that if you can intervene upstream in those behaviors and get people to identify them and change them, you can effectively prevent accidents rather than simply reacting to them after the fact.

For behavior-based safety to work, you really need two things: You need a management that is willing to trust and empower its workers, and workers who are willing to trust management to some extent, as well. The HAMMER Program at Hanford, as I understand it, has behavior-based safety as one of its premises, which I like.

The reason I like behavior-based safety in part is because it works. I think there is a lot of empirical evidence around the private sector that these approaches have been very effective in a relatively short time in driving down the number of accidents, missed workdays, and so forth, and it seems to work pretty quickly is the other attractive feature of it.

HAMMER is essentially a training program. It is really a program that in itself, in addition to its behavior-based approach, has a lot of good features; namely, it is workers training workers. No question that any examination of training programs shows that peers training peers works better than having experts come in and talk to people who have a very different work experience and understanding of work.

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[1] Hazardous Materials Management and Emergency Response.

It is also very hands-on. The hammer approach is really to make the transition between classroom work and on-site practice and training and do simulated training, very similar to what people are going to confront on-site. That, too, has been proven to work. And in addition, it has independent accreditation. It has experts from universities around the country and draws from the National Institute of Environment Health and Safety criteria for worker training that I think give some assurance that the quality of the program is high. So HAMMER is a good step in the right direction. My understanding is that it is up and rolling and fully funded for this year, and I think that is the way it should be.

Mr. INSLEE. I take it you don't see a conflict with the standards-based approach, then?

Dr. O'TOOLE. No. Not at all. In fact, it ought to be a step towards the standards-based culture.

Mr. INSLEE. Thank you.

At this time, I would be happy to recognize Mr. Fawell. I don't know if you have a statement but I would be happy to defer at this time, I and a host of others.

Mr. FAWELL. The more I look at this area, I recognize you have a daunting challenge of immense proportions. Having had some experience with OSHA and seeing how they struggled with trying to be able to come up with proper standards for the private sector, I think they have had maybe—tried maybe approximately 30 standards over 20 years and it has been a struggle all the way. And I see what is—and the public sector was just left behind.

The private sector inherited the concept of occupational safety and health back in 1973, and for whatever reason, it has not invaded very much the public sector. And when it invades those responsibilities, it is just a mammoth amount of responsibility that you have.

On top of all of that, as you have pointed out, there is a potential conflict of interest. You recognize the staff does not have the expertise to any degree you would like, nor do you have the money. And so it—it certainly is an immense responsibility.

Let me ask this one question, though. How—to what degree have you related to OSHA, NIOSH, EPA, and other entities—there is also the Defense Nuclear Facilities Board—well, as far as OSHA is concerned, is there any obligations as yet under the law that they become a part of this responsibility?

Dr. O'TOOLE. No.

Mr. FAWELL. Being perhaps more of an independent entity. None whatsoever.

Dr. O'TOOLE. No. We have four memoranda of understanding with OSHA that provide for cooperation between the agencies on various technical efforts. These are actually very useful activities because they are getting our staff in the habit of dealing with each other, and also, I think, affording OSHA some much-needed resources.

We are working together, for example, to develop an ergonomics standard, which DOE has been busy on for a number of years and has made, I think, significant progress. So those kinds of cooperative efforts, I think, are important. But no, there is no regulatory obligation on OSHA's part to do anything having to do with DOE with the exception of their regulation of occupational safety and health at the gaseous diffusion plants in Kentucky and Ohio, which were, prior to last year, DOE facilities. They have been transitioned to the Uranium Enrichment Corporation. And the regulatory deal that was made in that transition was that the Nuclear Regulatory Commission would oversee nuclear matters in those plants and OSHA would take over nonnuclear health and safety.

There have been some rough spots in that road, and I think we can learn from that transition what kinds of issues we are going to have to resolve before OSHA could take on bigger hunks of DOE. But other than that, there are no obligations on OSHA's part with regard to DOE.

Mr. FAWELL. You mentioned about the problems insofar as occupational health and safety are concerned, insofar as the nuclear facilities are concerned. We are talking about an area where there just is not much history on which to draw, which leaves one only the ability to refer to the private sector. And that certainly has been a difficult area, but it has been around for a while. What about the private nuclear industry, they are regulated by OSHA, RNC—NRC, I mean. Can't this be guidance?

Dr. O'TOOLE. Yes, definitely. We have adopted many of the commercial nuclear power standards from NRC. We have participated in the development of many of those standards, and some of the functions of the NRC, particularly the information gathering and distribution functions, we have basically copied and stolen, in some cases, and hope to elaborate on.

I would say, though, although there is much to be learned from NRC and I think a great deal to be learned from the private sector, as well. Some of the best corporations in the world have truly excellent health and safety programs and we can—we can identify and adopt many aspects of those.

But you know, the NRC has a relatively simple task compared to what confronts DOE. I mean, the NRC essentially regulates plants that are elaborate mechanisms for boiling water. And DOE has a much more complex array of operations and plants coupled with this legacy of old facilities that have not been well maintained, coupled with this new mission that no one has really walked through before, at least not on this scale. And those kinds of situations, not to mention the socioeconomic issues of union jurisdictional disputes, socioeconomic issues related to transition, so on, so forth, are going to make this complex.

Mr. FAWELL. Do you—I guess this is a simple question, but do you think that DOE is the best entity to assume these responsibilities?

Dr. O'TOOLE. I don't know. The Under Secretary has announced and is committed to the development—actually the establishment—this is ongoing now—of a Federal advisory committee that will include members of the Federal Government to look into whether or how nuclear safety in particular might be externally regulated at DOE.

As you point out, it is such a complicated set of issues that it is something that I think needs to be pondered and examined at length before we jump to any conclusions. The purpose of this advisory committee is basically to put some facts on the table so that we can all have a more informed understanding of the matter. And of course, the Defense Board will be producing in January of 1995 its own report on that very question.

And then there are the questions about whether and how to transition DOE to OSHA. The "whether" is already answered in my mind. I think the answer is yes. Exactly how one does it, what models one uses, what the overlap or split between OSHA and whoever or whatever, whether it is DOE or an outside regulator that oversees nuclear safety, are all questions that need to be carefully considered.

Mr. FAWELL. Well, thank you. I may have more questions to put to you in specific, but I just end my comments by saying you have quite a challenge, a group of challenges or a group of frustrations, probably both. Thank you.

Dr. O'TOOLE. Thank you, Congressman.

Mr. INSLEE. Thank you, Mr. Fawell. I just have a few more questions.

Dr. O'Toole, as far as the independent oversight group—I don't know if there is a more formal title.

Dr. O'TOOLE. Not at the moment.

Mr. INSLEE. You might want to hold a contest for that.

Dr. O'TOOLE. We are thinking of that, actually.

Mr. INSLEE. Watch the acronyms, whatever you do. Something to watch out for.

Dr. O'TOOLE. We were a little worried about OZ, actually.

Mr. INSLEE. Right.

Do you envision some type of action-forcing capability of that department or division, i.e. a red-tagging capability or some type of immediate enforcement authority? And if so, how would that be structured?

Dr. O'TOOLE. Yes. We have the authority, the Secretary has the authority and I, through her, have the authority to issue immediate corrective action plans, compliance agreements, essentially, that would certainly require contractors to take action in specific instances, to fix this, that, or the other thing; for example, within a certain amount of time or else face penalties in the form of docking their award fees. In cases of serious transgressions, even abrogating the contract, canceling the contract, or even prohibiting them from further bidding on or involvement in Federal contracts. And I am talking with our Office of the General Counsel as to how we might use that authority to enforce DOE orders and the intent of DOE orders. I think we need to think about how we would use that authority in situations that are, perhaps, less urgent and less specific than when there is a life-threatening circumstance out there that must be immediately corrected.

It is very rarely in my experience at DOE or in the private sector, for that matter, necessary to issue compliance orders in those situations. Usually any responsible employer would immediately take action. The more difficult conundrum is how you apply pressure effectively to get more generic problems fixed on a timely basis when people have had clear understanding of DOE's expectations, clear warning that programs weren't up to snuff and still aren't performing. And as I said, we are discussing with the Office of General Counsel as to what and how we might apply such pressure.

I would add that the Price Anderson rules, two of which are now out, and there is another dozen that will be out in the next year or so, allow for civil and criminal penalties for violation of the nuclear safety rules that, as I said, we are in the process of issuing.

Mr. INSLEE. Thank you.

In regard to the health surveillance initiative, who actually would be involved procedurally in doing that? Are we looking at DOE personnel, contractor personnel, or some consortium?

Dr. O'TOOLE. The framework and the guidance and the pilots are going to be run jointly by the Office of Health in my office and the Office of Worker Health and Safety under the new reorganization. We will be partnering with the line programs and the field offices and certainly working hand in hand with the contractors. There are some contractors that have good programs that we can build on and borrow from, others who have a long way to go. It is going to be a joint effort similar to the EH–EM initiative.

Mr. INSLEE. Are there any requirements for the contractors now or any of the RFP?

Dr. O'TOOLE. No.

Mr. INSLEE. Is that something that ought to be considered?

Dr. O'TOOLE. Yes. Contract reform, actually, I think, is a critical mechanism for applying the kind of clear expectations and enforceable demands that you were alluding to earlier. And my office has been working very actively in contract reform at DOE to put in place in all the renegotiated and new contracts provisions for, first of all, setting standards for who may bid on a DOE contract. If you have a lousy record with OSHA violations or EPA violations, you ought not even to be able to get in the game.

Secondly, we have to put in place some generic performance criteria that are a little bit more specific—I am being sarcastic—than "obey all the rules of the land and do the right thing." We have to, really, in order to be enforceable, codify more clearly what our expectations are. Then we will be working in EH with the line programs over time to develop more specific performance measures that could be incorporated in contracts that would be keyed to each site and the priorities of those sites.

Mr. INSLEE. We assume that is going to be implemented at some point?

Dr. O'TOOLE. I certainly hope so. I certainly expect it, yes.

Mr. INSLEE. In regard to OSHA, I have a couple questions about OSHA transition.

Dr. O'TOOLE. Sure.

Mr. INSLEE. First off, there is concern that this transition may be a permanent transition with no eventual consummation. And I think there is some legitimate reason to be concerned about that. What—you alluded to or stated that it would not be in the country's best interest to simply transfer resources from DOE and personnel from that function into the OSHA umbrella, if you will, or agency so they can handle that function under the OSHA umbrella. Tell us your thoughts why that is. Because at least my perception is this is principally a resource difficulty or at least one of the principal problems is a resource difficulty with OSHA. If that is true and if DOE, if you will, has the resources to provide this independent oversight, I can see some argument that it is simply appropriate to simply transfer resources to OSHA. Tell us your thoughts in that regard.

Dr. O'TOOLE. Let me reframe the query a little bit. I think the dilemma we are in is trying to convince the country that now is the time for preventive measures, now is the time to put in place organizational and institutional processes that will keep bad things from happening. I firmly believe that external regulation is one of those mechanisms that has been proven in America to work. It gets people's attention if you are immediately subject to civil and criminal penalties. I think that was borne out at the gaseous diffusion plants, which originally gave DOE something like a seven-year time frame before they would be able to come into compliance with our orders, which essentially mirror OSHA's in nonnuclear areas. And then when they heard they were going to be transitioned to OSHA, they were in compliance within six months. It just focuses the mind to have that threat out there, unfortunately, but that is the case.

What OSHA and DOE need to do is to make the case that OSHA regulation will be value-added and will be essential to preventing a catastrophe at DOE. But we are in the same position that a doctor is and that I have been in as a physician in trying to convince someone to lose weight, lower their blood pressure before they have a heart attack.

I think the investment that we are talking about in making OSHA capable of taking on DOE is minuscule in terms of the whole Federal budget and a terrific deal in terms of what the possible liabilities of not doing this would be.

But if you look—to go to your second question, why ought we not just transfer monies and people from OSHA—from DOE to OSHA, if you look at any corporation the size of DOE—and I don't know of a corporation that has the range and the severity of hazards that DOE houses. But if you look at anybody who is comparable, they have their own very robust in-house health and safety staff. And remember that our office is responsible not just for overseeing and providing assistance to the weapons complex but to do the same thing for fossil energy, for nuclear energy, for energy efficiency in our energy labs, and so on and so forth.

I have a hard time imagining—certainly our office can achieve efficiencies and we are going to. But I have a hard time imagining how we are going to get away with a very much smaller EH in a reconfigured DOE subject to external regulation. You can shrink it somewhat and hopefully over time some of the resources now centered in EH will become resources integrated into the line programs, but you really do need a centralized multidisciplinary oversight authority in a large corporation like this as a check before regulation and litigation comes down on your head, if you want to be efficient about it.

Mr. INSLEE. Thank you. Is there any concept or thought about incremental steps to OSHA right now that will be considered?

Dr. O'TOOLE. Yes. That is part of what we are talking about, and I think that is the kind of series of options that ought to be explored in this study that we are embarking on.

Mr. INSLEE. Let me, if I can, ask you about something at Hanford; and I don't know about the other sites, but there is some contractor reform going on in creation of a different contractual relationship. We have several contractors on the site as opposed to one M&O contractor. Concerns have been raised about the safety aspects of that, about the difficulties in maintaining site-wide safety programs that are consistent throughout a site. I would like your comments about that, and if there are concerns, for instance, the difficulties in maintaining lines—clear lines of authority, clear lines of safety jurisdiction and responsibility. First off, I would like your comments whether that concern is real, and secondly, what is the best thing to do about?

Dr. O'TOOLE. I think the concerns are several. The problem DOE faces is trying to achieve greater efficiency and economy. In its line programs, we must do this.

As the report Tom Connelly produced last summer showed, we paid three times what other government agencies paid to get the cleanup job done; and we cannot afford that, given the scope of the challenge before us. One way to drive down costs, as you know, is to bid out projects to more efficient, smaller, different corporations than simply the prime contractor, which has operated almost the totality of functions at DOE sites in the past. The problem comes in trying to reconcile those economic efficiencies with the necessity for having a strong centralized safety function and clear accountability for safety.

There are many ways of achieving clear accountability, and I think the DOE Manual of Functions, Assignments and Responsibilities, the so-called FAR Manual, which is being finalized, lays out very explicitly and clearly who in the Federal work force is responsible for what; and that is not going to change with transition to ERMAC. Tom Grumbly is still ultimately responsible for health and safety at his sites; and I can assure you that my colleague, Mr. Grumbly, is not interested in doing anything that would diminish or cloud his authority or responsibility in health and safety areas.

As I said, the challenge is to figure out organizational mechanisms for assuring strong health and safety accountability and quality with many contractors on site. This isn't an insurmountable problem. It is confronted every day at construction sites where the norm is to have many contractors on site. And the Business Roundtable has clearly demonstrated that in private sector construction it is a lot more cost-effective to put in a strong, centralized health and safety program than to farm it out to all the different contractors crawling around on a site.

And I think there are examples in the private sector, such as the building of the Boston Harbor Tunnel, that point us in the direction where we might go. Where the actual details of the organizational solutions to these problems are at Hanford, I couldn't tell you right now, but I can tell you that we recognize the dilemma at DOE, and we are trying to forge a solution.

Mr. INSLEE. Have you got any great insight to share with us about that solution?

Dr. O'TOOLE. I have some specific ideas. Some of this might be better discussed in a nonpublic setting. With Tom Grumbly, I think one thing we all agree on this is the centrality of the contract, and it simply must contain very strong health and safety language and expectations, plus performance ought to be explicitly delineated in health and safety areas, and contractors' fees and incentives ought to be again tightly linked to health and safety.

Mr. INSLEE. Thank you. I have a couple more questions, but Representative Scott has joined us. If you have any questions——

Mr. SCOTT. Thank you, Mr. Chairman. I am sorry I was running late; I had another commitment.

I am not sure which questions have been asked. Can you briefly explain how claims from former workers are handled now?

Dr. O'TOOLE. You are talking about Workers' Compensation claims, Congressman?

Mr. SCOTT. Workers who are complaining of exposure to radiation.

Dr. O'TOOLE. The current mechanisms for workers seeking relief, who believe or have been exposed to hazardous substances at DOE in the past, or who are concerned that they are suffering ill health effects as a consequence of those exposures, are first of all the Workers' Compensation system, which varies from State to State; and in my experience as an occupational medicine physician and as our general counsel, Mr. Nordhaus, has said, is not a very satisfactory way of finding remedies and seeking relief for these problems.

Secondly, workers may seek compensation under the Federal tort laws which, not being a lawyer, I don't understand very well; but I have again heard from Mr. Nordhaus that these are very complicated rules to negotiate and do not favor workers, generally speaking. We have a number of initiatives—I should say, the General Counsel has a number of initiatives underway to try and streamline and make more equitable our processes for dealing with workers who fear harm from past exposures. These have to do with revising DOE policy towards workers, particularly those who are worried about radiation exposure and so forth, but at the moment those are really the only two mechanisms I know of for seeking relief.

Mr. SCOTT. Do the workers have problems with medical proof to show how they got the symptoms they have?

Dr. O'TOOLE. Yes. In any Workers' Compensation claim, the burden is on the worker to prove that, A, he or she had the exposure, and B, that the exposure was a direct contributor to his or her malady; and the level of proof is more probable than not that the two are linked and, in the case of DOE workers who in the early days may have suffered exposures that were incompletely or inadequately recorded, that is a problem.

There is also a lot more uncertainty than knowledge about the consequences, particularly over the long term, of exposure to any number of chemicals or types of radiation. So there is a lot to prove, and it is very difficult.

Mr. SCOTT. There have been suggestions about storage of nuclear waste in universal-type casks where they can be transported, stored in the one universal container. How is the progress on that, and how does that relate to safety? Is that part of the things you are considering?

Dr. O'TOOLE. Certainly it links to safety. I apologize. My office is not involved in the universal cask project, although we do cover packaging and transportation in our office; and this is one of those specialized areas of safety that is underpeopled, unfortunately, but very critical. And there are a lot of packaging and transportation issues out there that involve, for example, transporting different types of plutonium from one spot on one site to another—to another perhaps more safe storage facility. And then there are issues of moving things from one site to the next across State lines and so forth. All of those have their own packaging and transportation issues, some of which are under the jurisdiction of DOT and some of which are DOE's responsibility.

Mr. SCOTT. Are there are other issues you are looking at or other procedures like universal casks that would have a positive impact on health and safety of workers?

Dr. O'TOOLE. Are you talking about in packaging and transportation in particular?

Mr. SCOTT. Yes.

Dr. O'TOOLE. Yes, we have actually made great progress in packaging and transportation safety, I think, over the last two or three years. It has gotten the attention of a number of people both in my program and in Defense Programs in particular. And the procedures, the formality of the procedures for moving things around DOE has improved greatly. The formality of training for people who do this work has improved and is now completely concurrent with DOT requirements—has improved, so I think we are making progress there. But given the cleanup responsibilities, there are going to be a lot of packaging and transportation issues coming up in the next several years.

Mr. SCOTT. Thank you.

I will stop there, Mr. Chairman. Thank you.

Mr. INSLEE. Thank you.

Representative Schiff.

Mr. SCHIFF. Thank you, Mr. Chairman. Actually I have no questions. I have always appreciated the testimony of Dr. O'Toole and have just been listening to this, because obviously in my State of New Mexico we have had a number of areas where we have worked with nuclear materials and which I think will be subject to cleanup as described by Dr. O'Toole, so I just appreciate being here at the hearing.

Thank you, Mr. Chairman. I yield back.

Mr. INSLEE. Thank you.

Dr. O'Toole, I have a couple of more questions. In regard to medical-monitoring the former workers, there have been concerns raised, or suggestions, about how to expedite that from organized labor; and I imagine you are familiar with those. I wonder if you could comment about some of those suggestions, if they have merit—if you have difficulty implementing them, on how to expedite this process.

Dr. O'TOOLE. Yes, I think there are a lot of suggestions that have merit. They tend to be very different from union to union. But there are a number of very interesting suggestions.

As I said, the whole question of what it is we are after varies considerably from union to union, and then how to get there is also a matter of much debate. And what we are proposing with the Keystone process is to get everybody in a room on a fairly concentrated, short-term basis and thrash out what the issues are and what the best ideas are. And then it is DOE's responsibility—and I recognize that—to go forward and implement the program, to get something rolling, because as Mr. Scott said, there are workers out there who are worried, who are suffering, who are in need of help; and it is the Secretary's determination, and mine, to do something about that.

Mr. INSLEE. Thank you, Dr. O'Toole. Any other questions for the panel?

With that, we appreciate your testimony we look forward to next time. We hope that we see continued progress. We are confident of that. And thank you for joining us.

Dr. O'TOOLE. Thank you.

Mr. INSLEE. If our next panel would join us, we have Mr. John Conway who, as most of the Western World knows, is Chairman of the Defense Nuclear Facilities Safety Board.

And Mr. Wells, if he could join us as well, Mr. Jim Wells is Associate Director of Resources and Economic Development at United States General Accounting Office; and Mr. Sheldon Samuels, Executive Vice President, Workplace Health Fund, Industrial Union Department of the AFL–CIO.

Gentlemen, thanks for joining us.

STATEMENTS OF JOHN T. CONWAY, CHAIRMAN, DEFENSE NUCLEAR FACILITIES SAFETY BOARD; JIM WELLS, ASSOCIATE DIRECTOR, RESOURCES, COMMUNITY AND ECONOMIC DEVELOPMENT DIVISION, U.S. GENERAL ACCOUNTING OFFICE; AND SHELDON SAMUELS, EXECUTIVE VICE PRESIDENT, WORKPLACE HEALTH FUND, INDUSTRIAL UNION DEPARTMENT, AFL–CIO

Mr. INSLEE. Mr. Conway, I believe you are leading off.

Mr. CONWAY. Thank you for inviting me here today. I am here representing the Safety Board. As you all know, the Safety Board was set up by the Congress over the objections of the DOE. The then-Secretary of Energy, Admiral Watkins, testified in opposition to such a board being set up, but Congress, in its wisdom, decided such a board was necessary. However, the President didn't get around to appointing the members to the board until a year later in late October of 1989. So we have been in being as a board since October of 1989.

We started off with just the five board members, and we had to find a place to live. We had to get a staff together, and today we have in place staff personnel.

Initially, when the Congress was considering setting up our board, there was a debate within the Congress whether or not we should be an outside, independent regulator or should we be an advisor to the Secretary. As the bill came out of the Congress and was signed by the President, in effect, we advised the Secretary on nuclear safety matters. The Secretary may accept in whole or in part or decline to accept our recommendations.

To date, we have made 29 separate sets of recommendations consisting of 123 specific recommendations, and of those, all but one has been accepted and that one is currently under consideration by the Secretary.

I submitted a prepared statement which I will ask if you will receive it as if given, and I will just make a few comments and then be responsive to questions from your committee.

Mr. INSLEE. So ordered.

Mr. CONWAY. I have made some notations as Dr. Tara O'Toole spoke and responded to your questions. And I would like to comment on a number of the points that she made.

I agree with her completely that the DOE, as it moves into this transition period going through the decommissioning of the defense facilities—that the work is much more hazardous than it was when the DOE was in a production mode. There is no question in my mind whatsoever the buildings are old, the waste and—much of the waste is maintained in an interim storage manner, and it must be stabilized. We do not know where some of this material may be.

One hundred seventy-seven tanks exist today at Hanford—high-level, liquid, radioactive material. We do not even know as of now the exact makeup of what is in the tanks. The tanks need to be—the material in the tanks needs to be characterized, and we are right now in the process—and when I say "we," the country is in the process through the DOE, and its contractors are trying to characterize the material that is in those 177 tanks at Hanford.

There are other facilities at Rocky Flats and elsewhere that we believe must be put in a more stable form within the next two or three years; otherwise, we will be moving into what I consider, and the other board members consider, a much more hazardous situation.

Dr. O'Toole noted that there is a need for more technically competent personnel in DOE. We agree with that, and that has been a point that this board on which I serve—our board has maintained and recommended that since its inception. And it is not new with us. You can go back to 1981 and through the 1980s, and various technical organizations—and I will supply it for the record, the particular groups that have recommended that the DOE must improve its technical management competence.

The National Research Council, the Advisory Committee on Nuclear Facilities Safety, the so-called Ahearne committee that preceded our board. Each and every one of these groups, including the GAO, has made this recommendation in the past.

Now, in many ways, it has not been DOE's fault in not having the technical competency that it really needs. And one of the first recommendations I and other board members made—actually, not a recommendation because we didn't formalize it at the time, but we suggested to Admiral Watkins when he was Secretary that he obtain the capability of getting technical competence. The DOE for many years and right up to this day has been handicapped in that it has not had the same capability of attracting good, technically competent people that other agencies of the government have had.

The NRC, the National Science Foundation and a number of other government agencies, including our board today, have what I call excepted service, and I think every time that I have testified in the last four and a half years I have made the point that the Department of Energy must have excepted service and not be held to the rigid requirements of the Civil Service Commission in attracting technical personnel.

The first time I met with the current Secretary when she was nominated, that was the first suggestion I made to her. Well, the board finally—our board—we felt necessary to formally recommend that to the Secretary, that she get that capability, because it included going to the Congress and getting the Congress to pass legislation.

The Congress this year has passed that legislation, and the President, I am informed—this past week, I believe, he either has signed or is about to sign the authorization bill which grants the DOE that capability. So I think in the years to come it has an added capability of getting the type of technical personnel it needs.

But it has been under a tremendous handicap from its inception, and as I say, I am pleased that the Congress did listen to our recommendation and to the requests of the Department and granted them that authority.

Another point the Secretary—Dr. O'Toole mentioned, the need for her technical personnel to get out into the field. Not only her own technical personnel that are assigned to her oversight work, but the line management must do that.

I point out in my prepared statement that GAO, in March, noted that approximately 20,000 personnel work for DOE; actually I am informed it was 20,500. Of that 20,500 personnel, there are 5,200 in the field—5,200 in the field. Now, that is where the work is—not here in Washington, not at headquarters.

My staff, the 96 people I have, about half of them are technical personnel. I have them in the field constantly. In fact, a year ago the Bureau of the Budget, OMB, was raising some questions about all Federal agencies cutting back on transportation. I objected to that, asked for a waiver of that requirement. I said my transportation costs are going to go up. It makes no sense for my technical people to be here in Washington, D.C., when the work is out in the field.

We are setting up site representatives. One of the first places I put a site representative was out—I, speaking for the board—was out in Hanford because we consider that one of the most important. I have a site representative, full-time site representative; and also I have—we have two down at Pantex. That is another area, we are now in the process of dismantling our nuclear weapons. The goal is something like 2,000 a year.

I have one individual down there the board hired with 40 years of helping to design and assure the safe assembly of these weapons. I have him training a younger individual who is also with him, so that we can develop technical competence in the younger people coming in. But it is very, very important; and I agree 100 percent with Dr. O'Toole, we need to have the people out in the field.

Nuclear safety standards, there was some question about the need for standards. There are, I guess it must be, a hundred standards that the DOE has had over the years, but there are 51 key ones, 51 key standards that apply to nuclear safety matters; and there is no reason we can't get the contractors to comply with those standards. We have had difficulty in the past in forcing them to comply with the standards, and since 1990, one of the first recommendations we made was in the standards area. We are still pushing this area.

How do you do it? You write out in your contract, and as you enter into new contracts, as the DOE is currently doing, you can put specific language in there that specifies when they come in to bid on a contract that they must meet those standards and the procedures that go along with those standards; and we, as a board, are insisting when we go out and review these, the work that is being done in the field, that the contractors must be held to those standards. And the line management in the field—out in the field, DOE line management must hold the contractors to those standards.

The question—I think it was Mr. Fawell raised a question about more than "contractor," how do you do it with the numerous contractors? You have one prime contractor and insist that is the main one and controls all of the other contractors. When you have a construction job, you have—one individual contractor is running the job and any other specialties must work through that particular contractor. But then you would have the line management of DOE. That is where you need good technical competence that the DOE line management knows what it is doing; and it forces the contractor and contractors, the subcontractors, to comply with the procedures and requirements that are imposed by those safety standards. It is not that difficult.

As we go into decommissioning and taking some of these buildings apart and restoring these sites, one of our board members, Joseph DiNunno has continually pointed it is not much different from an engineering point of view. How do you approach this? You approach it from a systems approach. Before you start tearing down a building, trying to clean up a particular facility, you plan out ahead of time how you are going to do it, step by step, where do you want to be at the tail end?

You have to know what you are taking down. You have to have experts that know how to do this. You have to know what is in the building, what are the hazardous materials; and then you have to play it completely out as a system. You do not start to tear down a building, you do not start to work on a particular facility without knowing where at the end you are going to be and where you are going to put the material that you are going to eventually take out.

We are going to be producing a great deal more waste material when we tear these buildings down, and some of these facilities may not be able to be torn down safely—we may have to entomb them in place—but that has to be prepared ahead of time. We have to know exactly what we are doing.

I would suggest, whether it be Hanford, Rocky Flats or any of the other defense facilities where we face this problem—and we are going to spend billions of dollars in doing this work—we have to know ahead of time exactly what we are going to do and do it in the systems approach. We cannot continue to do as we see it, since this board in its inception, we see almost a status quo.

Monies are going into places that are keeping the facilities sort of as they are, and tremendous amounts of money are being spent without systems planning; and that is going to take some expert people, dedicated people. And we have got to force the contractors that get these contracts, that supposedly are going to do it, to sit down and work with DOE and with line management explaining exactly how they are going to do each and every one of the facilities; and we don't see that being done yet.

Another point that was approached is on the need for the technical people and the question of training. Nearly every one of our recommendations has carried with it the recommendation for training of personnel. There is no problem, in my opinion, of different contractors working at a particular site. The personnel that are out there need to be trained, and whether it be Hanford or whatever, the technical—the people who are going to have to do the work, it is incumbent upon DOE—it is incumbent upon the management by the contractor to train these people ahead of time. When they are properly trained they will do their work right.

But too often when we have gone in and looked at existing facilities, and they are going to start up some work, we have found too often the personnel are not properly trained. So I am a strong believer, and the board is a strong believer in proper training.

There are some other matters I could make, but I think that is—one other question, the question of OSHA, to what extent does OSHA have responsibilities? And I think Mr. Fawell also raised the question, is DOE under OSHA? Dr. O'Toole is exactly right that OSHA currently does not regulate DOE, but DOE is required to comply with OSHA standards. My board is not required to comply with OSHA standards because the original law that set up OSHA specified Federal employees were not under it. However, there has been an Executive Order which, in effect, states that agencies, in preparing standards and rules and regulations, should make them consistent with OSHA standards, but unless they are approved by the Department of Interior—specific agencies have their requirements and standards approved by Department of Interior, and DOE has not had that happen; then the Federal agencies are required to comply with OSHA standards, and that is, as I understand, the current law.

With that, I will open myself to questions.

Mr. INSLEE. Thank you. Before we do that perhaps we can entertain Mr. Well's comments.

Mr. CONWAY. I have been corrected by my counsel; it is Department of Labor, not Department of Interior.

Mr. INSLEE. Thank you.

[The prepared statement of Mr. Conway follows:]

STATEMENT OF

JOHN T. CONWAY, CHAIRMAN

ON BEHALF OF

THE DEFENSE NUCLEAR FACILITIES SAFETY BOARD

"THE DEPARTMENT OF ENERGY SAFETY AND HEALTH STRATEGY"

SUBCOMMITTEE ON ENERGY

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

UNITED STATES HOUSE OF REPRESENTATIVES

September 22, 1994

Chairman Lloyd, members of the Subcommittee, it is a pleasure for me to appear today before the Subcommittee and testify regarding the Defense Nuclear Facilities Safety Board's (Board) oversight of the Department of Energy's (DOE) defense nuclear complex. Congress created the Board in 1988 as an independent oversight organization within the Executive Branch to provide advice and recommendations to the Secretary of Energy regarding public health and safety at DOE's defense nuclear facilities. Broadly speaking, the Board reviews operations, practices, and occurrences at DOE's defense nuclear facilities and makes recommendations to the Secretary of Energy that are necessary to protect public health and safety. Upon receipt of a recommendation, the Secretary must accept or reject it, in whole or in part, and then prepare an implementation plan for those portions which are accepted.

To date, the Board has issued 28 sets of recommendations, containing 123 individual specific recommendations. The Secretary has accepted the first 27 sets of the Board's safety recommendations. A response to its most recent Recommendation 94-2 is currently undergoing DOE review.

If, as a result of its reviews, the Board determines that an imminent or severe threat to public health or safety exists, the Board is required to transmit its recommendations directly to the President, as well as to the Secretaries of Energy and Defense. The Board also assesses safety management and personnel effectiveness for defense nuclear activities both within DOE and the various operation and management (O&M) contractor organizations.

The Board's enabling statute, 42 U.S.C. § 2286, requires the Board to review and evaluate the content and implementation of health and safety standards, including DOE's Orders, rules, and other safety requirements, relating to the design, construction, operation, and decommissioning of DOE's defense nuclear facilities. The Board must then recommend to the Secretary of Energy any specific measures, such as changes in the content and implementation of those standards, that the Board believes should be adopted to ensure that the public health and safety are adequately protected. The Board is also required to review the design of new defense nuclear facilities before construction begins, as well as modifications to older facilities, and to recommend changes necessary to protect health and safety. Board review and advisory responsibilities continue throughout the construction, testing, and operation of new facilities.

The Board may conduct investigations, issue subpoenas, hold public hearings, gather information, conduct studies, establish reporting requirements for DOE, and take other actions in furtherance of its review of health and safety issues at defense nuclear facilities. These ancillary functions of the Board and its staff all relate to the accomplishment of the Board's primary function, which is to assist DOE in identifying and correcting health and safety problems at defense nuclear facilities. The Secretary of Energy and contractors at defense nuclear facilities are required to cooperate fully with the Board.

The Board's organizational resources are modest when compared with the magnitude of its assigned functions. Currently, the Board's full-time professional staff numbers 96. While the Board is authorized to hire up to 150 persons, budgetary limits have kept this number closer to 100. The Board supplements its full-time staff by the use of outside experts. A copy of the Board's organizational chart is attached. (Attachment 1)

Each year the Board reports to Congress its progress in improving safety at defense nuclear facilities. By statute, the Board's fifth annual report, to be submitted in early 1995, must contain the following three elements:

> "(1) an assessment of the degree to which the overall administration of the Board's activities are believed to meet the objectives of Congress in establishing the Board;
> (2) recommendations for continuation, termination, or modification of the Board's functions and programs, including recommendations for transition to some other independent oversight arrangement if it is advisable; and
> (3) recommendations for appropriate transition requirements in the event that modifications are recommended."

The Board has begun work on this report, and plans to hold public hearings in the fall of 1994 to obtain a wide range of views on the issues the report must address.

The Board's previous and current activities are best summarized in the Board's statutorily-mandated reports to Congress, four of which have been submitted since 1991. A copy of the Board's latest report, filed February 1994, is enclosed for the Subcommittee's information. The 1994 report outlines the Board's current safety initiatives.

For the past five years, the Board has consistently pursued improvements in DOE's safety programs at defense nuclear facilities by recommending actions which address some of the safety concerns of this Subcommittee. For example, starting in March of 1990, with Recommendation 90-2, the Board has issued a series of recommendations seeking the identification of applicable safety standards, orders, rules, and other requirements; assessment of their adequacy; and compliance with those standards at the facilities. The Board also sought major structural improvement in the overall nuclear safety program through issuance of Recommendation 91-1 in the following year. Subsequently, the Board issued a number of recommendations directed at inadequate order compliance at specific facilities, and then tracked DOE efforts to correct the problems identified by the Board.

Similarly, the Board's recommendations and activities have attempted to force DOE to address personnel deficiencies within DOE's nuclear safety programs. This is most evident in Board Recommendation 93-3, which sought enhancement of DOE's recruitment, hiring, education, and training of technical personnel both in line and oversight organizations. However, 93-3 was the culmination of three years of Board activity related to safety and personnel issues, beginning with the Board's very first recommendation, 90-1, which identified inadequacies in DOE's reactor operator training at Savannah River.

Implementation of Board Recommendation 93-3, and other Board proposals which fall under the 93-3 personnel umbrella, remain one of the Board's highest priorities.

From the outset, the Board has also followed DOE efforts to effectively reorganize both line and oversight functions within the Department's nuclear defense complex. This effort has spanned two Administrations and has not yet been culminated.

In addition to a brief overview of the Board's responsibilities and activities, you specifically asked for the Board's view on several topics related to DOE's internal oversight of nuclear safety and the Department's commitment to compliance with "strong nuclear safety and health standards." The Department's determination and capability to carry out effective internal nuclear safety oversight has been a subject of continuing concern to the Board. In its fourth annual report, the Board observed:

> Among the long-standing matters [of safety concern] is the relatively poor record of DOE in its self-regulating efforts. DOE and its contractors have not fully embraced the necessity for conducting nuclear operations in accordance with safety standards, Orders, and other requirements. . .In a similar vein, DOE and contractor personnel are often inadequately trained for the technical challenges they face. . .This in turn has an impact on the Board's mission, since the Board and its staff must provide technical advice and oversight in instances where DOE line and oversight organizations should have anticipated and corrected problems without Board intervention. (Report at 40)

Internal safety oversight by DOE will be among the major topics analyzed in the Board's fifth annual report to Congress. The public hearings which the Board will hold prior to completing this study will invite testimony on this critical issue.

On May 6, 1994, the Board issued to the Secretary of Energy a formal reporting requirement on the subject of internal oversight program criteria and organizational arrangements. (Attachment 2) The second section of the reporting requirement delves heavily into matters which the Board understands the Subcommittee intends to explore. The Department's response to this requirement is due on October 3, 1994. The Board will be pleased to provide to the Subcommittee a copy of the Department's response as soon as it is received.

The Board has been informed that the Office of Environment, Safety and Health is undertaking a major internal reorganization which to date has not been finalized. The Board is most interested in how that office will be structured because that will have a major effect on DOE's nuclear safety program and the work of the Board. Of particular interest will be the number and technical competency of the personnel dedicated to nuclear oversight and their methods of operation.

The Board has continuously brought to DOE's attention numerous deficiencies in its oversight program during the past five years. For example, Congress requires the Board to review and evaluate the content and implementation of safety standards, including all applicable Department of Energy orders, regulations, and other requirements, at defense nuclear facilities. As the General Accounting Office, the National Academy of Sciences, and others have noted, and as the Board quickly verified, DOE field offices and contractors were not complying with DOE safety standards, Orders, and requirements. In many cases, they are still not in compliance with those requirements.

The Board's efforts in promoting safety and discipline of operation at defense nuclear facilities through a standards-based compliance program have had positive effects in many areas. In others, the Board has not been as successful in bringing about needed changes due to inadequate technical management by DOE and its contractors. For example, DOE has yet to provide a fully adequate Implementation Plan for Board Recommendation 90-2, submitted to DOE on March 8, 1990. That recommendation calls for identification of safety standards, assessment of their adequacy, and determinations of the status of compliance with those standards at defense nuclear facilities.

Secretary O'Leary has recognized the problem. By memorandum dated February 9, 1994, she instructed the DOE field offices that "[i]t is unacceptable that some of our facilities have yet to achieve, or even to demonstrate the status of, compliance with the Department's environment, safety and health orders." (Attachment 3) She also has designated two Deputy Assistant Secretaries to produce an acceptable implementation plan for Recommendation 90-2 by the end of this month. The Board is optimistic that an acceptable plan is close to completion.

In recent months, the standards effort has encountered a new potential roadblock. There is an increasing tendency by some to insist that safety requirements, and changes thereto, be imposed in the first instance by the rulemaking process, which is time consuming. While supportive of the rulemaking concept, the Board has consistently advocated that DOE implement and enforce necessary safety requirements, and any necessary modifications, as quickly as possible. This ordinarily means that DOE should utilize the less time-consuming process of issuing safety orders and incorporating them into the contracts of M&O contractors at the sites. The Board does not oppose the issuance of safety requirements through rulemaking, but believes awaiting their development may cause unsafe conditions in the interim. Safety orders and other mechanisms can fill the gap.

Furthermore, although the 1988 amendments to the Price/Anderson provisions of the Atomic Energy Act called for rigorous enforcement of safety requirements at DOE facilities, the Board is unaware of any such enforcement actions yet being taken. DOE's record of contract enforcement of safety Orders and other requirements at defense nuclear facilities needs to be greatly improved.

Chairman Marilyn Lloyd in her July 25, 1994 letter also asked: "What do you see as key steps that can be taken by the Office of Environment, Safety and Health to strengthen its nuclear safety program?"

In response, I would suggest the following:

Hasten the implementation of Board Recommendations which call for providing sufficient number of technically qualified personnel to the oversight function. In this connection, it would be especially important to accrue a sufficient number of technically-trained personnel, through recruitment and training, to provide effective safety oversight of field offices and contractors. They must be independent of line management and report directly to headquarters. Most of their time must be spent in the field as site representatives, or on constant travel status.[1]

ES&H personnel need to be in the field to do independent oversight properly. They must possess a thorough knowledge of DOE safety standards, orders and requirements. Their principal job is to assure DOE headquarters that field line management and DOE contractors are knowledgeable of the safety standards, orders, and requirements and are in strict compliance with those requirements.

Finally, for competent oversight personnel to be effective, they must be organized in a manner which safeguards their independence of judgment, avoids conflicts-of-interests created by performance of both line and oversight functions, and ensures access to Department leadership when serious safety problems are uncovered.

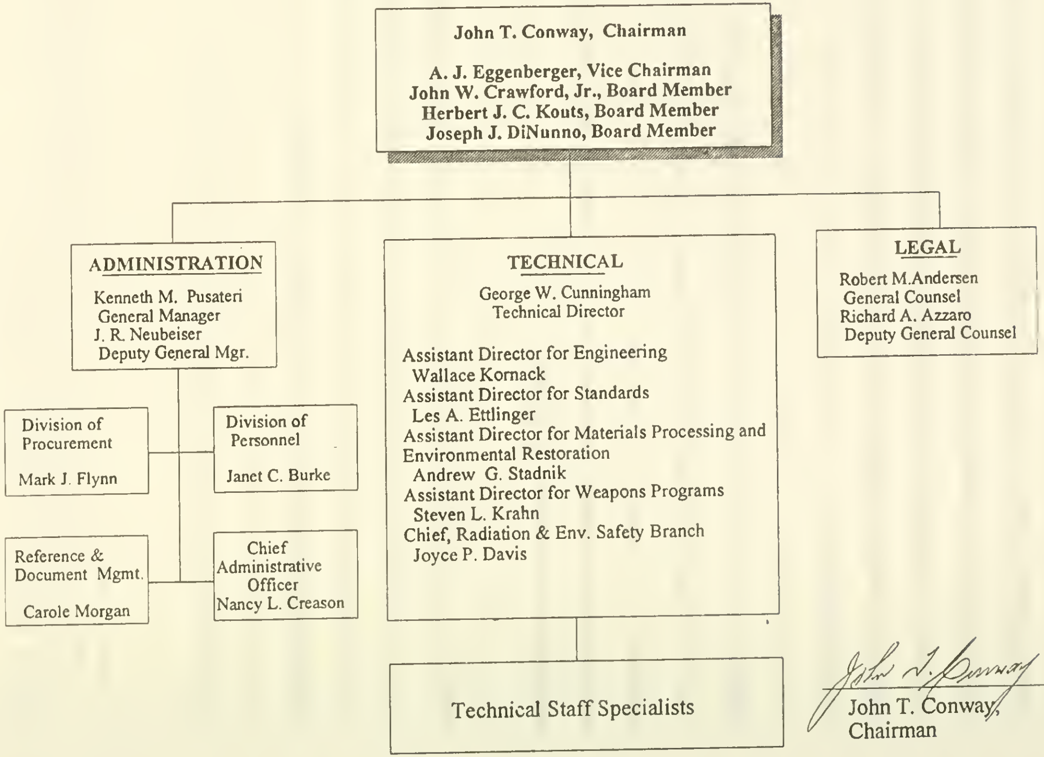
I would be pleased to answer any questions that the Subcommittee may have.

---

[1] GAO, in a March 1994 Report, noted: "Historically, DOE has provided little oversight over its contractors' activities and the resulting costs to DOE. DOE has about 20,000 employees, 5,200 of whom are located in field offices directly responsible for overseeing contractors."

ATTACHMENT 1

DEFENSE NUCLEAR FACILITIES SAFETY BOARD


John T. Conway, Chairman
A. J. Eggenberger, Vice Chairman
John W. Crawford, Jr., Board Member
Herbert J. C. Kouts, Board Member
Joseph J. DiNunno, Board Member
ADMINISTRATION
Kenneth M. Pusateri
General Manager
J. R. Neubeiser
Deputy General Mgr.
Division of Procurement
Mark J. Flynn
Division of Personnel
Janet C. Burke
Reference & Document Mgmt.
Carole Morgan
Chief Administrative Officer
Nancy L. Creason
TECHNICAL
George W. Cunningham
Technical Director
Assistant Director for Engineering
Wallace Kornack
Assistant Director for Standards
Les A. Ettlinger
Assistant Director for Materials Processing and Environmental Restoration
Andrew G. Stadnik
Assistant Director for Weapons Programs
Steven L. Krahn
Chief, Radiation & Env. Safety Branch
Joyce P. Davis
Technical Staff Specialists
LEGAL
Robert M.Andersen
General Counsel
Richard A. Azzaro
Deputy General Counsel

John T. Conway
John T. Conway,
Chairman

May 13, 1994

ATTACHMENT 2

John T Conway Chairman
A J Eggenberger, Vice Chairman
John W Crawford, Jr
Joseph J DiNunno
Herbert John Cecil Kouts

DEFENSE NUCLEAR FACILITIES
SAFETY BOARD

625 Indiana Avenue NW Suite 700 Washington DC 20004
(202) 208 6400

May 6, 1994

The Honorable Hazel R. O'Leary
Secretary of Energy
Washington, D.C. 20585

Dear Secretary O'Leary:

The Board is required by statute to address three specific topics in its fifth annual report to Congress:

> (1) an assessment of the degree to which overall administration of the Board's activities are believed to meet the objectives of Congress in establishing the Board;
>
> (2) recommendations for continuation, termination, or modifications of the Board's functions and programs, including recommendations for transition to some other independent oversight arrangement if it is advisable; and
>
> (3) recommendations for appropriate transition requirements in the event that modifications are recommended. [42 U.S.C. 2286e(d)]

To fulfill this obligation, the Board must assemble information from many sources including the Department of Energy (DOE).

The Board recognizes that under your leadership the Department has been undergoing a major reorganization with respect to its management of defense nuclear facilities. This reorganization has affected the roles and responsibilities of the various offices responsible for nuclear safety at DOE, and extends to the contracting process as well as to line management and independent oversight assignments. To carry out its statutory duty, the Board must understand in detail how certain aspects of this reorganization affect the Department's programs for assuring public and worker safety, for minimizing risk to life and property, and for protecting the environment.

The Board has determined that the Department should provide a report, pursuant to 42 U.S.C. 2286b(d), on two subjects described in detail below. This information, which is necessary for development of the fifth annual report, is also consistent with the thrust of Board Recommendation 92-5 regarding the Board's need to keep apprised of changes affecting safety in the defense nuclear complex. The report need not be organized strictly according to the topics listed. However, the report should clearly indicate where each listed topic is covered.

The DOE Report, pursuant to section 2286b(d) regarding reporting requirements, should be transmitted no later than 90 days after receipt of this letter.

I. Nuclear Health and Safety Management Program

In this area, the report should:

A. Provide a comprehensive exposition of the functions DOE deems necessary for an effective nuclear safety management program. This should consider:

   1. applicable provisions of the Atomic Energy Act and the Price-Anderson Act,

   2. comparable Federal nuclear safety programs (Naval Reactors, Nuclear Regulatory Commission),

   3. areas highlighted by Congress in establishing the functions of the Board, and

   4. integration of public and worker safety programs, including radiological and non-radiological components.

B. Provide a brief summary description of the basic safety management system that the DOE currently has in place for satisfying its responsibilities under the Atomic Energy Act "to protect or to minimize danger to life and property". The description should include:

   1. A flow diagram that depicts the considerations of safety during the life cycle of a defense nuclear facility through the major stages of:

      Design
      Construction
      Operation
      Decontamination & Decommissioning
      Environmental Restoration

   2. The DOE process for establishing the safety management plans for specific facilities, including a discussion of how the management plan is adjusted as a facility transitions from one stage to the next.

   3. The principal safety elements (rules, regulations, orders, standards, and other requirements) that are applicable at each of the above stages.

4. The relationship between orders and standards identified in Requirements Identification Documents (RIDS) and nuclear safety regulations enforceable under the Price-Anderson Act Amendments; indicate how compliance and enforcement will be assured for both types of requirements.

5. The adaptation of the basic safety management system for defense nuclear facilities to the assembly and disassembly of weapons and the conduct of weapons testing.

C. Provide views on the advisability and feasibility of establishing a DOE complex-wide self-appraisal capability modeled on that used by the Institute for Nuclear Power Operations (INPO).

II. Nuclear Safety Responsibilities and Organizational Arrangements

In this area, the report should:

A. Define the safety responsibilities of all organizations which have such responsibilities for defense nuclear facilities, including DOE Headquarters, field offices, contractors, and oversight organizations. The responsibilities of the following Headquarters positions should be addressed: Under Secretary, Assistant Secretaries for Defense Programs, Environmental Management, Environment, Safety and Health, the Associate Deputy Secretary for Field Management, and the Directors for the Office of Laboratory Management and the Office of Intelligence and Security. Where safety responsibility has been assigned and then delegated, this should be indicated.

B. State the principles embodied in assignments of safety responsibility for defense nuclear facilities, and compare them to parallel principles applied in commercial nuclear practice. Examples of such principles are: clear separation of line management responsibilities and functions from independent oversight functions and responsibilities; quality assurance group reporting directly to high-level management.

C. Identify potential conflicts of interest in existing safety assignments, and what actions (if any) are planned to eliminate these conflicts. For example, analyze the inherent problems, whether real and perceived, of having a single organizational element (ES&H) provide both technical support to the line and also conduct independent oversight of DOE compliance and enforcement programs. Another typical conflict of interest is the assignment of both line management and quality assurance functions to the same individual or group.

D. Describe in detail how the Office of Environment, Safety and Health will carry out independent oversight functions in light of its assigned functions to assist line organizations. Indicate how this Office will simultaneously assist line management, assess performance, and conduct enforcement actions at the same facility. Explain the actions to be taken by this office in performance-based safety compliance assessments at defense nuclear facilities, where performance is measured against DOE safety orders, regulations, and other standards and requirements of the contract.

E. List special measures, if any, which have been taken or will be taken to ensure that safety responsibilities for defense nuclear facilities are well-defined and understood throughout the Department, and its contractor organization.

F. Differentiate the relative roles of the contractor, DOE line management, and DOE oversight in executive safety management functions such as development and issuance of safety policies, orders, rules, standards and guides.

G. Provide an appraisal of the Department's current organization and capabilities relative to the safety functions identified in Item IA. and delineate changes needed to strengthen the nuclear safety management program.

If the Department wishes further information on either the intent of this report or its desired content, the Board is available for further discussions. Alternatively, your staff should feel free to contact Mr. Robert M. Andersen, the Board's General Counsel, for further guidance.

Sincerely,

John T. Conway

John T. Conway
Chairman

c: M. Whitaker, Acting DOE/EH-6

ATTACHMENT 3

94-0000600

The Secretary of Energy
Washington, DC 20585

February 9, 1994

MEMORANDUM FOR HEADS OF HEADQUARTERS AND FIELD ELEMENTS

FROM: HAZEL R. O'LEARY

Hazel R. O'Leary

SUBJECT: COMPLIANCE WITH DEPARTMENT OF ENERGY ORDERS

Departmental compliance with environment, safety and health requirements is of utmost importance to me. One of my earliest statements upon becoming Secretary concerned the need to define clear management expectations, establish performance measures, and hold individuals accountable for their performance. I fully recognize that compliance alone does not assure safety; however, it is an essential foundation for effective safety and health management.

It is unacceptable that some of our facilities have yet to achieve, or even to demonstrate the status of, compliance with the Department's environment, safety and health orders. Requirements needed for safe operation must be identified and compliance with them must be demonstrated. This is the premise of the Defense Nuclear Facilities Safety Board recommendation 90-2 that was accepted by the Department over three years ago. It is also the rationale behind the Standards/Requirements Identification Documents program. However, our progress under these programs has been slow.

Your personal attention and support is needed to assure that the Department establishes a coherent and demonstrable requirements program. I am holding my senior managers accountable for implementation of critical, established departmental health and safety requirements such as those specified by the Radiological Control Manual. Excellence in environment, safety and health is among the goals critical to the success of all Department of Energy missions. I intend to carefully evaluate Managers' performance in devising and realizing aggressive, achievable schedules for compliance programs.

I have tasked the Assistant Secretary for Environment, Safety and Health to define departmental criteria for establishing an acceptable standards program for operating facilities and to assist you in developing effective means to satisfy them. These criteria will be defined by May 9, 1994. As always, but particularly on this issue, departmental teamwork will be essential to resolving what has been a persistent problem.

Mr. WELLS. Thank you, Mr. Chairman.

Mr. INSLEE. The record will reflect that is the first error that Mr. Conway has made that we are aware of.

Mr. WELLS. We are pleased to participate in this hearing today.

I noted in your opening statement, Mr. Chairman, you talked about one of the purposes to talk about today, what has been happening at DOE in the past, the present, and the future. I think it is fair to say that in the past DOE has had an awfully difficult time convincing people like us in the General Accounting Office, and with the Safety Board, that DOE has in fact been doing a good job.

In terms of the present, there is no doubt that they face some major challenges. Over the past five decades, in addition to producing tens of thousands of nuclear weapons, the DOE complex has also produced huge volumes of radioactive and other toxic substances. These conditions represent potential threats to the over 600,000 men and women who have worked at the complex over the last 50 years and the people who live in the surrounding communities.

DOE's new task of cleaning up the environmental contamination at the over 7,000 sites, decontaminating and decommissioning, as Mr. Conway pointed out, 12,000 surplus buildings and dismantling tens of thousands of nuclear weapons pose today and in the future, risks that probably will be greater than when DOE was actually in a production mission.

DOE's ES&H office will in fact play a key role in ensuring that the DOE protects its workers and the public from these many hazards. Because DOE workers are often exposed on a daily basis to hazardous conditions, it is essential that DOE's health and surveillance program be effective. In the past, that has not been so. The goals of the program are to limit workers' exposures, identify the causes for the adverse health effects, intervene to either minimize or completely eliminate any of these problems, and prevent occurrences.

At the time of our review in December of last year, none of these goals were being met, and Dr. O'Toole alluded to the fact this morning that that is true. Although DOE hoped to implement its program by 1992, as we were conducting our audit, we reported in December that only 40 percent of DOE workers were, in fact, covered and that the program would not be fully implemented as it was designed then until some time after 1998.

To address these problems we recommended a number of things—that DOE develop an implementation plan for getting that program rolling and to correct the many problems that we saw in the field in terms of how data was being collected.

It is fair to say that DOE has taken some major steps to correct a lot of its data collection problems. In terms of an implementation plan, DOE today still cannot project when all of its workers will be included in any health surveillance plan. As Dr. O'Toole clearly said earlier this morning, the health surveillance program currently is being reconfigured to increase its focus on preventing dangerous workplace exposures in order to effectively prevent diseases.

Mr. Chairman, to DOE's credit, this new approach is definitely far superior to the old program that we audited last year and that the earlier program's design was basically built on a premise that could not provide an effective early warning of health problems because of the long latency period between exposure and development of disease. Basically, it was a program that was waiting 10 or 20 years until a worker reported an illness and then trying to figure out how that exposure occurred.

DOE's ES&H office is also responsible for overseeing nuclear safety performance at Department facilities. In our June 1994 report, we discussed the office's lack of a systematic approach for elevating many of the safety issues up the chain of command and ultimately to the Secretary; the potential impairment of the office's independence as a result of a new emphasis on assisting line management; and the office's lack of adequate number of qualified staff. We recommended that DOE take steps to address these issues.

To date, part of what we heard this morning, the ES&H office has in fact formulated a reorganization plan aimed at maintaining the independence of its oversight functions and has in fact started implementation plans that will greatly increase the number of oversight staff that will be assigned to be watchful at DOE's facilities.

You also asked us to comment today on DOE's aim of having OSHA regulate existing DOE facilities. Because OSHA's existing responsibilities nationwide are considerable—and what I mean by "considerable," is that OSHA has a couple thousand inspectors and has a responsibility to about 20 million workers already—DOE and OSHA, as Dr. O'Toole alluded to this morning, are in the talking stage. They are having meetings; however, progress does appear to be somewhat slow. The main reason is the uncertainty over resources. How much will this regulation scheme cost and who will fund it?

OSHA officials tell us that they are very cautious about taking on new additional resources, and DOE officials also, as Dr. O'Toole alluded to, are somewhat concerned that maybe these resources might come from DOE's budget, which in fact could impair their own ability to protect workers.

Mr. Chairman, in summary, I would say that ensuring the health and safety of DOE workers and the people living nearby will continue to be a vital concern of the Department and it deserves congressional oversight.

Again in your opening statement, Mr. Inslee, you talked about a progress report. I tried to talk about the past and the present. The remaining issue was the future.

I suspect if I had the answer to your question for the future, my reaction for the future would be one of cautious optimism. We remain concerned that DOE cannot project when all DOE workers will be covered by a new health surveillance program. In addition, DOE needs to ensure that its ES&H office has the authority, the independence and the resources it needs to effectively oversee and enforce nuclear safety.

As we heard from Dr. O'Toole, DOE has a lot of plans to do things differently in the future. And, optimistically, these plans do sound good; and we have no quibble with the redirecting of the health surveillance program toward prevention. We think it is a noteworthy goal; we think it makes sense, but DOE does have major problems to overcome.

Just having a vision or a concept is noteworthy, but how well this filters down from headquarters to the field, to the contractors, and to the individual workers remains to be seen. There is an old saying that the devil is in the details. The bottom line will be that it will take time, resources, and attention to a lot of implementation details that, quite frankly, DOE hasn't worked out yet.

Mr. Chairman, this concludes my prepared statement. Following the panel, I would be glad to answer any questions.

[The prepared statement of Mr. Wells follows:]

United States General Accounting Office

GAO

Testimony

Before the Subcommittee on Energy,
Committee on Science, Space, and Technology,
House of Representatives

For Release on Delivery
Expected at
1:00 p.m. DST
Thursday
September 22, 1994

HEALTH AND SAFETY

Protecting Workers and the Public Continues to Challenge DOE

Statement of Jim Wells,
Associate Director, Energy and Science Issues,
Resources, Community, and Economic
Development Division

GAO/T-RCED-94-283

Madam Chairman and Members of the Subcommittee:

We are pleased to participate in this hearing on the efforts of the Department of Energy (DOE) to protect the health and safety of the workers at its facilities and the people living in communities nearby. Recently, we have issued reports on two key functions of DOE's Office of Environment, Safety, and Health (ES&H)--health surveillance and nuclear safety oversight.[1] To assist the Subcommittee in its oversight responsibility, today we would like to discuss the findings and recommendations of these reports and the actions DOE has taken in response, as well as outstanding issues related to the transition of DOE's facilities to regulation by the Occupational Safety and Health Administration (OSHA).

In summary, we found the following:

-- DOE's ES&H Office manages a Health Surveillance Program that is designed to analyze data about workers' health and on-the-job exposures in order to detect work-related health problems as early as possible. Although DOE hoped to fully implement its program by 1992, we reported in December 1993 that only 40 percent of DOE's workers were covered, the program would not be fully implemented until 1998, and some data on workers' health were not included in the program's analyses. To address these problems, we recommended that DOE (1) develop an implementation plan for the program that outlined the tasks to be performed as well as specific milestones and (2) correct the problems with data collection in the current program before expanding it to additional sites. DOE has taken steps to correct the data collection problems, making plans for a data coordinator and establishing deadlines for data submission. As of September 1994, DOE cannot project when all workers will be included in the program because the ES&H Office is reconfiguring its overall approach to workers' health surveillance.

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[1] Health and Safety: DOE's Implementation of a Comprehensive Health Surveillance Program is Slow (GAO/RCED-94-47, Dec. 16, 1993); Nuclear Safety: Unresolved Issues Could Impair DOE's Oversight Effectiveness (GAO/RCED-94-129, June 7, 1994).

-- DOE's ES&H Office is responsible for overseeing nuclear safety performance at the Department's facilities. Our June 1994 report discussed the Office's lack of a systematic process for elevating safety issues up the chain of command and ultimately to the Secretary; the potential impairment of the Office's independence as a result of a new emphasis on assisting line management; and the Office's lack of an adequate number of qualified staff. We recommended that DOE take steps to address these issues. To date, the ES&H Office has formulated a reorganization plan aimed at maintaining the independence of its oversight functions and has started implementing plans to greatly increase the number of oversight staff.

-- The Secretary of Energy announced in May 1993 that DOE would begin consultations with OSHA with the aim of establishing regulation by OSHA of DOE's facilities. The Secretary stated that her announcement signaled the Department's determination to operate more openly and by the same health and safety rules that govern private industry. In October 1993 testimony before this Subcommittee, we said that specific milestones to guide the transition to OSHA regulation and the exact roles to be played by OSHA, the ES&H Office, and DOE's line management had not been defined.[2] This is still the case.

Before discussing these points further, we would like to provide some background information on the hazards posed by DOE's operations and the role played by the ES&H Office in ensuring that DOE adequately protects its workers and the public from these hazards.

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[2] Safety and Health: Worker Safety and Health Oversight Issues Facing DOE (GAO/T-RCED-94-54, Oct. 21, 1993).

BACKGROUND

Operations at DOE's facilities pose many potential hazards to workers at the facilities as well as to the communities located nearby. Over the past five decades, in addition to producing tens of thousands of nuclear weapons, the DOE complex also produced huge volumes of radioactive and other toxic substances. These included the radionuclides uranium, plutonium, and cesium; toxic metals; organic solvents; and chlorinated hydrocarbons. All of these represent potential threats to the over 600,000 men and women who have worked at the complex over the last 50 years and the people in the surrounding communities. Furthermore, workers face numerous safety hazards, such as the risk of fire, explosions, or industrial accidents. DOE's new tasks of cleaning up environmental contamination, decontaminating and decommissioning plants and equipment, and dismantling nuclear warheads pose continued risks to workers and the public. For example, much of the weapons complex is old, presenting serious risks to individuals who work in and around the aging facilities. In addition to posing safety problems because of their poor physical condition, inactive facilities can contain known and unknown contaminants that increase the dangers for workers.

DOE's ES&H Office plays a key role in ensuring that the Department adequately protects workers and the public from these hazards. The functions of the Office include a medical surveillance program for workers that emphasizes the prevention of illnesses and injuries in the workplace. The Office also formulates the agency's standards related to safety and health, provides technical assistance to line management--DOE headquarters offices, field offices, and contractors--in implementing these standards, and conducts independent internal oversight of line management's safety and health performance. The Office's oversight activities include a variety of programs for assessing safety and health performance, such as a program in which representatives are stationed at DOE sites to routinely monitor safety and health practices at DOE's facilities. The Office also is responsible for nuclear safety enforcement functions associated with the Price-Anderson Amendments Act of 1988.[3]

Now we would like to discuss the three areas mentioned earlier in greater detail.

KEY HEALTH AND SAFETY PROGRAM DOES NOT ADEQUATELY PROTECT WORKERS

Because DOE's workers are often exposed on a daily basis to hazardous conditions that can seriously affect their health, it is essential that DOE evaluate its health and safety procedures to determine their effectiveness and to identify areas for improvement. One of the key programs we recently reviewed, the Health Surveillance Program, is designed to systematically collect and analyze data about workers' health and workplace exposures in order to provide an early warning of health problems at the sites. The goals of the program are to limit workers' exposures, identify the causes of adverse health effects, intervene to minimize or eliminate the causes of the adverse effects and institute policies and procedures to prevent reoccurrences. At the time of our review, these goals were not being met.

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[3] This act, among other things, authorized DOE to prescribe regulations for its contractors' nuclear activities and to issue civil monetary penalties for violations of these regulations. DOE has begun to issue nuclear safety rules and expects to publish many in their final form during 1994.

Limited Coverage of Workers and Data Problems Reduce Program's Effectiveness

Although DOE intended to fully implement the Health Surveillance Program by March 1992, at the time of our review last year, only 7 of DOE's 33 facilities were participating in the program. Although the seven facilities are among the largest DOE sites, only about 40 percent of DOE's 150,000 contract workers were included in the program. Since our review, DOE has added to the program approximately 8,100 workers from three sites that had begun developing health surveillance operations in 1993. With these additional sites incorporated, the program now covers approximately 45 percent of DOE's workers.

However, the program's effectiveness in protecting workers from hazards at DOE's sites is limited because information on workplace exposure is not routinely collected and analyzed. Although DOE's goal is to limit workers' exposures and identify potential causes of health problems, the program currently analyzes only data on workers' injuries and illnesses based on information provided by the participating sites. As a result, DOE cannot systematically determine if hazardous conditions at the sites could adversely affect workers' health. DOE is currently developing the exposure component of the Health Surveillance Program and expects to test procedures for assessing exposures at five sites during 1995.

We also found that some information on grave illnesses among workers at DOE sites may not be reported to the Health Surveillance Program. For example, the program's primary source of data on injuries and illnesses is the "return-to-work medical clearance." After a worker's absence, this form is completed by a physician in the site's medical department, certifying that the employee is physically able to return to work. The form reports the employee's coded identification, the number of days absent, and, most importantly, the type of illness or injury. But we found that an employee with a major illness or injury who does not return to his or her job is not issued this clearance. Thus, some major illnesses and injuries are not reported to the program. For example, in 1991 a University of Washington contractor compared cancer data submitted to the program by the Hanford Site with national cancer data over the period 1985 to 1990. Among the 60 to 64 age group at Hanford, he found only 39 percent of the cases expected. The most plausible explanation, according to the contractor, is that people who become sick and have cancer diagnosed often simply retire and do not report back through the site's medical departments.

Technical Problems, Understaffing, and Lack of Planning Delay Program's Implementation

According to an Office of Health official, technical problems and understaffing have complicated the effort to develop and implement the program. The official told us that because multiple contractors manage and operate the sites, different methods are used to track and maintain information on employees. Contractors' automated data processing resources vary, which also affects contractors' ability to collect and store records. In addition, in 1990 the official planned for a staff of five to carry out the development and management of the program. In mid-1992 however, the staff level was frozen and, at the time of our review, only one full-time epidemiologist was working on the program. Since then, the Office has hired a second full-time epidemiologist for the program.

We also found that a lack of program planning within the

Office of Health has contributed to the delay in the program's implementation. For example, during our review, the most recent Health Surveillance Program Plan, dated September 1993, did not contain an implementation strategy that outlined the specific tasks to be accomplished or established milestones for their completion.

As a result of the weaknesses we found in the Health Surveillance Program, our December 1993 report recommended that DOE (1) develop an implementation plan that outlines the tasks to be performed, as well as specific milestones, and (2) correct the problems with data collection in the current program before expanding it to additional DOE sites. DOE has taken steps to correct some of the problems discussed in our report but other issues remain unaddressed. To correct data collection problems, program officials are exploring alternate sources, including both workers' disability claims and states' tumor registries, for identifying any additional cases of cancer occurring in the work force. In addition, the Department has implemented deadlines for each site to submit data and plans to hire a full-time data coordinator and programming staff.

However, DOE has not yet developed an implementation plan for the program and, as a result, we still have concerns about overall strategic planning within the Office of Health. Specifically, in July of 1993 the Deputy Assistant Secretary of

Health assigned responsibility for developing components of the program to three suboffices of the Office of Health and took responsibility for managing the program's overall development, including coordinating each suboffice's efforts. But without an office-wide plan to guide and coordinate each suboffice's efforts, including precisely defined goals and milestones, it will be difficult to measure the Office's progress. According to an Office of Health official, although the Office intends to develop the plan, both a reconfiguring of the program and the recruitment of a new Deputy Assistant Secretary to replace the one who recently left have thus far delayed the effort.

Timeframe for Effective Workers' Health Surveillance is Unknown

We are also concerned, Madam Chairman, that DOE still does not know when all DOE's sites and workers will be covered by the program. Initially, DOE intended to fully implement the Health Surveillance Program by March 1992. During our review last year, the Program Director then estimated full program implementation by 1998. Currently, DOE is reconfiguring its overall approach to medical surveillance and, until the new procedures are developed, DOE cannot project when a fully functioning program will be implemented at its sites.

According to a DOE official, the Health Surveillance Program currently is being reconfigured to increase its focus on preventing dangerous workplace exposures in order to effectively prevent diseases. This new focus on prevention requires that program components be developed to analyze the hazards at each site of each particular job or task, as well as to detect types and concentrations of potentially harmful substances. Together, analyzing job tasks and assessing exposures provide the information needed to identify and group workers by exposure. The reconfigured program requires that if the data show that workers are experiencing high exposures to toxic substances, actions can immediately be taken to alter job tasks and reduce exposures that could be harmful. To DOE's credit, this new approach is superior to the earlier program's design that could not provide an effective early warning of health problems because of the long latency period between exposure and development of disease.

According to a DOE official, the Office of Health currently is developing new orders and guidance specifying the contractors' roles in assessing workers' tasks and potential exposures. The official expects these assessments of exposures and job tasks to take place at each of five sites annually until assessments of all sites have been completed. Until these components can be developed and implemented, however, DOE continues to operate a program that analyzes only illnesses and injuries and that, as a result, is of limited effectiveness in protecting workers' health and safety.

UNRESOLVED ISSUES COULD IMPAIR EFFECTIVENESS OF DOE'S NUCLEAR SAFETY OVERSIGHT AND ENFORCEMENT

In response to persistent safety problems at DOE's nuclear facilities, GAO and others have recommended that DOE perform strong independent internal oversight of its contractors' nuclear operations.[4] In addition, as previously noted, the Price-Anderson Amendments Act of 1988 authorized DOE to prescribe regulations for its contractors' nuclear activities and to enforce these regulations through the issuance of civil monetary penalties. To be effective, the organization responsible for the independent oversight and enforcement of nuclear safety within DOE must possess certain basic characteristics, including adequate authority to raise safety concerns up the chain of command, independence from line management, and an adequate number of technically qualified staff. In our recent report on the Department's nuclear safety oversight and enforcement activities, we reported on issues related to each of these characteristics.

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[4] See, for example, Better Oversight Needed for Safety and Health Activities at DOE's Nuclear Facilities (GAO/EMD-81-108, Aug. 4, 1981); Nuclear Health and Safety: Oversight at DOE's Nuclear Facilities Can Be Strengthened (GAO/RCED-88-137, July 8, 1988); The Nuclear Weapons Complex: Management for Health, Safety, and the Environment, National Research Council (National Academy Press, Dec., 1989); and Hazards Ahead: Managing Cleanup Worker Health and Safety at the Nuclear Weapons Complex, Office of Technology Assessment (Feb. 1993).

Regarding raising safety concerns up the chain of command, in its December 1989 report on DOE, the National Research Council recommended that, if responsible line managers do not take appropriate actions to correct identified safety and health problems, the ES&H Office should have the authority to raise concerns up the chain of command in DOE. In our June 1994 report, we found that the ES&H Office has some capability to elevate issues to higher levels of management and, ultimately, to the Secretary of Energy. For example, according to the Secretary's staff, the Assistant Secretary for ES&H has free access to the Secretary and can seek the Secretary's involvement in resolving nuclear safety issues when necessary. However, we found that no overall systematic approach exists for elevating issues and that the current methods for doing so do not always ensure that significant issues will be elevated up DOE's hierarchy when necessary. For example, the former Director of DOE's Nuclear Safety Office was unsuccessful in attempting to obtain the Secretary's involvement in 1993 in relocating workers from a plutonium-contaminated facility at the Los Alamos National Laboratory.

Without a systematic process for raising issues up the chain of command, line management may not take adequate or timely actions to correct safety problems identified by the ES&H Office. In a previous review of the ES&H Office's occupational safety site representative program, we found that, in the absence of a systematic approach for elevating issues to the Secretary, DOE's line management did not adequately address some significant problems cited by the site representatives.[5] During our review of the ES&H Office's oversight of nuclear safety, senior ES&H Office representatives responsible for monitoring nuclear safety at DOE sites told us that in some cases line managers do not take adequate action to correct nuclear safety problems they have identified.

Past reviews by GAO and the National Research Council have stressed the importance of vigorous independent internal oversight in helping to ensure safe operations at DOE's nuclear facilities. In addition, the International Atomic Energy Agency and the Nuclear Regulatory Commission have emphasized that regulating nuclear safety requires independence.[6] However, we found that recent changes within the ES&H Office could impair the Office's ability to independently oversee and regulate nuclear safety within DOE. In response to directions from the Secretary, the ES&H Office is working more actively with managers of the line programs to help them improve their ES&H performance. For example, the ES&H Office launched a major long-term assistance project at the Hanford Site in September 1993. While this new emphasis on providing assistance could help to improve line management's performance, it could also impair the independence of the ES&H Office. Specifically, senior officials in the Office may be less inclined to report on and penalize poor nuclear safety performance by line management if, at the same time, their staff are helping line management to solve nuclear safety problems.

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[5] See Safety and Health: Key Independent Oversight Program at DOE Needs Strengthening (GAO/RCED-93-85, May 17, 1993).

[6] See Code on the Safety of Nuclear Power Plants: Governmental Organization, International Atomic Energy Agency, Safety Series no. 50-C-G, rev. 1 (Aug. 1988) and Five Year Plan, Fiscal Years 1991-1995, U.S. Nuclear Regulatory Commission (Nov. 1990).

The Defense Nuclear Facilities Safety Board has repeatedly found, during its 4 years of operation, that DOE lacks an adequate number of technically qualified staff to ensure that its nuclear facilities are operated safely. At the time of our review, the ES&H Office did not have an adequate number of qualified staff to oversee nuclear activities and enforce nuclear safety standards. Although the ES&H Office plans to expand its overall staff level, the Office had not yet determined how many additional positions would be allocated to nuclear safety oversight and enforcement. Therefore, it was not clear whether the Office would have an adequate number of qualified staff to effectively carry out these functions.

Actions Are Needed to Resolve These Issues

To address these problems, we recommended that DOE (1) establish a systematic approach for the ES&H Office to elevate safety issues up the chain of command and ultimately to the Secretary, (2) separate the ES&H Office's oversight and enforcement functions organizationally from the Office's assistance functions, and (3) ensure the availability of adequate qualified staff within the ES&H Office to oversee nuclear safety and enforce nuclear safety standards. DOE has already taken some steps toward implementing these recommendations. In particular, DOE officials told us that they recognize the importance of maintaining the independence of the ES&H Office's oversight efforts and will try to accomplish this by reorganizing the Office. Specifically, to keep oversight efforts separate from assistance efforts, DOE plans to place the ES&H Office's environment, safety, and health oversight functions within one suboffice responsible solely for oversight. However, DOE has not yet made a final decision about where to place its nuclear safety enforcement function. The ES&H Office has also started hiring more oversight staff and, according to a senior official in the Office, plans to nearly double the number of representatives at the sites by the end of fiscal year 1994.[7]

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[7] After our report was issued, the Senate, in July 1994, amended the Fiscal Year 1995 Defense Authorization Bill to require DOE to take actions to ensure that (1) the Department has a system for bringing nuclear safety issues to the attention of senior officials, (2) officials in the ES&H Office responsible for nuclear safety oversight and enforcement maintain their independence from line management, and (3) an adequate number of qualified personnel are assigned to perform nuclear safety oversight and enforcement. Senate and House conferees have agreed to include this provision in the bill.

DOE'S TRANSITION TO OSHA REGULATION IS STILL NOT WELL DEFINED

In May 1993, Secretary O'Leary announced that DOE would begin consultations with OSHA with the aim of having OSHA regulate all of DOE's facilities. The Secretary stated that her announcement signaled the Department's determination to operate more openly and by the same health and safety rules that govern private industry. Because OSHA's existing responsibilities for regulating workplaces nationwide are considerable, the transition of DOE's facilities to OSHA regulation needs to be planned carefully to ensure that the current level of oversight of DOE's facilities will be maintained or strengthened after OSHA takes over.

In our October 1993 testimony, we said that specific milestones to guide this transition and the exact roles to be played by OSHA, the ES&H Office, and DOE's line management had not been defined. This is still the case. DOE and OSHA have engaged in discussions and have agreed that, during the next year, OSHA officials will visit DOE sites to learn more about what would be involved in regulating them. According to both OSHA and DOE officials, the main reason for the slow progress in planning the transition is uncertainty over resources--including how much this regulation will cost and how it will be funded. OSHA officials explained to us that, given OSHA's current significant responsibilities and limited resources, the agency is cautious about taking on this additional responsibility until they analyze the resources that would be needed and obtain these resources. DOE officials acknowledge that OSHA cannot regulate DOE's facilities without additional resources. But these officials believe that taking these resources from DOE's budget could impair their ability to protect workers. A bill (H.R. 1280) that is currently pending in the Congress would give OSHA regulatory jurisdiction over workers' safety and health at DOE's facilities to the extent that the Secretary of Energy reimburses the Secretaries of Labor and Health and Human Services for the costs associated with this regulation.

SUMMARY

In summary, Madam Chairman, ensuring the health and safety of workers at DOE's facilities and people living nearby will continue to be a vital concern of the Department, particularly as the cleanup of environmental contamination at its sites progresses. As of September 1994, DOE cannot project when all workers will be included in the program because the ES&H Office is reconfiguring its overall approach to workers' health surveillance. In addition, DOE needs to ensure that its ES&H Office has the authority, independence, and resources it needs to effectively oversee and enforce nuclear safety. We also continue to believe that the transition of DOE's facilities to regulation by OSHA must be carefully planned.

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Madam Chairman, this completes our prepared statement. We will be glad to respond to any questions you may have.

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Mr. INSLEE. Thank you Mr. Wells. I appreciate it.

Mr. Samuels.

Mr. SAMUELS. Thank you, sir. Thank you for inviting me once again to comment on the health and environmental programs at the Department of Energy.

I want to make clear that while we disagree with the policy the Secretary inherited but is consciously maintaining, we continue to have faith in her instincts. We believe that, with full understanding, she will not leave to the Congress or the courts correction of a moral mistake, as did her predecessors, and leave in jeopardy the well-being of tens of thousands of families that are at risk today.

We would be unconscionably negligent, however, if we did not insist on a complete health and environmental program for DOE facility workers. The existing incomplete program is at the root of a hidden human tragedy, hidden because the victims are dispersed, without a concerted voice and out of sight. A human experiment is taking place.

Human medical experiments take many forms. Perpetuating a policy known to result in unnecessary disease and suffering until such time as the court or the Congress forces action means that human life is being sacrificed in order to determine a precise threshold of action.

That is the question that is being asked: How many must die in an obvious, publicizable manner before action is forced? That is precisely what the Department of Energy is doing to thousands of workers who have or are being terminated as employees at DOE atom bomb factories because of age or plant closure or other reasons.

They are being shoved out the door without appropriate medical assistance, many with latent and some with manifest disease associated with their past work in the nuclear weapons program. They are being given little more than the qualified right to buy insurance they may not be able to afford and cannot effectively use outside of a system of specialized care. That system does not now exist.

The Secretary and Dr. O'Toole have stated publicly that these workers must depend upon the proposed Health Security Act, and this afternoon we heard still another suggestion that we turn the whole program over to a group of group dynamicists in the Rocky Mountains, the Keystone program.

If they survive, the Gephardt and Mitchell bills will provide a framework. However, in these proposals, responsibility for intervening in the development of occupational disease is not specified and treating manifest disease, among active workers, is delegated to the existing State Workers' Compensation systems. Retired workers are left to the vagaries of the existing health care system.

Active workers are excluded from coverage in States, most if not all of whose Workers' Compensation laws do not take into account the long latency periods of most occupational diseases. An effective interface, permitting continuity of care between existing and proposed health care systems and the medical portion of the Workers' Compensation system does not exist and is not contemplated.

The worker and the family physician need a definite system of guidance. This can happen through legislation or administration, but in either case it is quite obvious it will not happen without your support and your direct intervention.

Apologists for the past will dispute our claim that to abandon these workers will result in unnecessary death and suffering. This too, is on the record. Others will question the efficacy of medical monitoring for all workers in this high-risk population. They will demand evidence that can only be collected after death.

There is sufficient evidence to act now without waiting for more postmortem data showing that these workers need specialized care appropriate to workers at very high risk of latent occupational disease, disease that may not have been manifested during their employment. These workers have a right to medical assistance for disease that can be attributed to their work for the Department and the Nation, but also as veterans of the Cold War they fought on behalf of all of us. Contrary to practices of public health that would be expected on behalf of any other population in American society, they have been denied routine intervention.

To wait, postmortem, is nothing less than to conduct another human experiment, to be exhumed by another Secretary at another time in another administration. What we are describing did not happen in the 1940s or 1950s on someone else's watch. Sir, this human medical experiment is being conducted today on your watch. You must act.

In the last administration, Secretary Watkins did not dispute our facts or our view on this issue. He bowed, we believe reluctantly, to the politics of the time. He made clear in the first meeting of his Environment, Safety and Health Advisory Committee that no action would be taken short of action in the courts, which has begun. In this administration, the Secretary and Assistant Secretary said "no" to systematic monitoring for all retired and terminated workers until they were forced to say "yes," at least in settlement of a lawsuit covering the Fernald, Ohio workers.

This usually happens in occupational health. It is unusual in community health. If cholera is traced to a community well, we no longer count more bodies before, one, we take off the pump handle, two, treat the manifestly afflicted, and three, set up an intervention system, starting with notification for those not yet with clinical disease. We are arguing for the last step, a public health procedure established hundreds of years ago and exercised in civilized societies, but not in the United States.

Dr. Snow uncovered the waterborne source of the cholera vibrio in London in 1854. He didn't wait to establish the precise identity of the agent, which took another 30 years, before taking action. That policy lesson must be retaught to my colleagues in the Department of Energy. We don't need total knowledge before we act. We need necessary and sufficient knowledge, which we have—which we have now, sir.

Evidence of disease generated by environmental hazards among uranium miners, similar to diseases and hazards among nuclear workers today, was established four centuries ago. For many industrial diseases to which bomb factory workers are prone, the conditions and outcomes were described more than two centuries ago. For the balance, the evidence has been pouring in since the turn of the century. In all cases, there is sufficient etiological detail to put into place preventive and interventive measures, yet a system of specialized medical care has never been put into place for any of the terminated or retired workers.

There are some in the Department who may ask for more research to devise a plan of high risk management. They ignore studies costing billions of dollars by the National Cancer Institute and other divisions of the Public Health Service. There is no need for more research prior to action. It has been done sufficiently for blue collar and other populations at risk of environmental disease. We have been active participants in many of these studies.

Moreover, Oak Ridge Associated Universities is close to completing a study among beryllium-exposed DOE facility workers that already provides experience within DOE's own system. We also are participants in that study.

Moreover, there is a highly skilled high risk management unit within the National Institute for Occupational Safety and Health associated with a national network of university resource centers to whom worker and physicians can be referred. The NIOSH centers were specifically created to be a national resource in occupational safety and health. Most are staffed and equipped for the kind of intervention appropriate in this case. That unit and the supporting centers can be activated today if Dr. O'Toole will call Dr. Rosenstock on the telephone.

Our members can have in place in a few days the simple community-based program they desperately need. That telephone call will not set into motion a program in which all problems will be solved on the first day, but it would set into motion a program like most public health programs that can be adjusted for local circumstances and can integrate findings from ongoing research that would assist these veterans of the Cold War.

In closing, sir, let me say we want to define as carefully as possible the program we believe can and should be put into place this week:

Notification of possible medical problems to the worker, the family, and the family physician;

Retrieval on request of the worker or attending physician from the DOE computer databases of chemical and physical agent exposures of the worker. Reconstruction of the dose by DOE in the absence of adequate data will frequently be necessary. I must tell you that DOE has the in-house capability to do that job now;

Referral of patients to selected clinics at NIOSH resource centers; and

Payment for treatment of disease from the existing insurance and medicare programs with coverage of the uninsured in the absence of a comprehensive Health Security Act by the Department of Energy. And they can afford to do it.

In closing, let me say, sir, it is easy to be an advocate of the dead. It is harder to be an advocate of the living.

Thank you for the privilege of appearing before you. The lives of tens of thousands of workers very clearly are in the hands of this committee.

[The prepared statement of Mr. Samuels follows:]

The Workplace Health Fund

TESTIMONY

A HUMAN EXPERIMENT AT DOE:
ABANDONING FORMER WORKERS
AT HIGH RISK
OF OCCUPATIONAL DISEASE

BY

SHELDON W. SAMUELS
EXECUTIVE VICE PRESIDENT
WORKPLACE HEALTH FUND
(INDUSTRIAL UNION DEPARTMENT, AFL-CIO)

BEFORE

SUBCOMMITTEE ON ENERGY
HOUSE COMMITTEE ON SCIENCE, SPACE AND TECHNOLOGY

September 22, 1994

815 16th Street, N.W., Suite 301, Washington, D.C. 20006 (202) 842-7833

[This testimony in its complete form, the Fernald settlement and CV summary are submitted to the Committee with the request that they become a part of the record of this hearing.]

The Workplace Health Fund is an occupational health research and development charity operated by the Industrial Union Department of the AFL-CIO. Amongst our affiliates are unions representing most of the organized workers in DOE facilities and unions doing remediation work at these sites. One of its founders and directors is Paul Burnsky, President Emeritus of the Metal Trades Department, which represents other unions not within the IUD and has collective bargaining agreements covering most DOE facilities. The Fund was invited, a decade ago by union representatives from most DOE facilities, to put into place programs aimed at defining health-threatening conditions and prescribing interventive public health measures. We provided technical advice to a sister agency which enabled the recent successful legal action in Fernald prescribing the financial basis for medical risk management.

The Fund is supported primarily by the Industrial Union Department, but our nuclear workers program also received support from the Metal Trades Department, OCAW's Alice Hamilton College, CFC and United Way contributions, competitive Public Health Service and Department of Labor grants, and DOE contracts covering research on uranium mining and Chronic Beryllium Disease.

Through his employment in the Public Health Service, Environmental Protection Agency, the labor movement and in the course of his academic work, the author has visited nearly every major DOE facility either as a guest of the workers, the government or the facility contractor.

Distinguished Chair and members of the Committee, thank you for inviting me, once again, to comment on the health and environmental programs of the Department of Energy.

It is important to make clear that while we disagree with a policy which the Secretary inherited, but is consciously maintaining, we continue to have faith in her instincts. We believe that with full understanding she will not leave to the Congress or the courts correction of a moral mistake, as did her predecessors, and leave in jeopardy the well being of tens of thousands of families.

The Secretary must be credited with significant accomplishments. Her chief medical advisor, Dr. O'Toole, has created an outstanding program of injury and disease prevention.

In the environmental management program, the Secretary is fortunate to have the services of Thomas Grumbly, who has put in place the nation's best program in waste management.

DOE, at least publicly, continues to press a reluctant Department of Labor to develop a backstop-oversight function in OSHA.

However, we would be unconscionably negligent if we did not insist on a complete health and environmental program for DOE facility workers. The existing incomplete program is at the root of a hidden human tragedy, hidden because the victims are dispersed, without a concerted voice and out of sight. A human medical experiment is taking place.

Human medical experiments take many forms. Perpetuating a policy known to result in unnecessary disease and suffering, until such time as the courts or the Congress force action, means that human life is being sacrificed in order to determine a precise threshold of action.

That is precisely what the Department of Energy is doing to thousands of workers who have or are being terminated as employees at DOE atom bomb factories, because of age or plant closure or other reasons.

They are being shoved out the door without appropriate medical assistance, many with latent and some with manifest disease associated with their past work in the nuclear weapons program. They are being given little more than the qualified right to buy insurance they may not be able to afford and can not effectively use outside a system of specialized care. That system does not now exist.

The Secretary and Dr. O'Toole have stated publicly that these workers must depend upon the proposed Health Security Act. If they survive, the Gephardt and Mitchell bills will provide a framework. However, in these proposals responsibility for intervening in the development of occupational disease is not specified and treating manifest disease, among active workers, is delegated to the existing state workers compensation systems. Retired workers are left to the vagaries of the existing health care system. Active workers are excluded from coverage in states (most if not all) whose workers compensation laws do not take into account the long latency periods of most occupational diseases. An effective interface permitting continuity of care between the existing and proposed health care systems and the medical portion of the workers' compensation system does not exist and is not contemplated.

The worker and the family physician need a definite system of guidance. This can happen through legislation or administration, but in either case it will not happen without your support.

Apologists for the past will dispute our claim that to abandon these workers will result in unnecessary death and suffering. Others will question the efficacy of medical monitoring for all workers in this high risk population. They will demand evidence that can only be collected post mortem.

There is sufficient evidence now to act now, without waiting for more post mortem data showing that these workers need specialized care appropriate to workers at very high risk of latent occupational disease, disease that may not have been manifested during their employment.

These workers have a right to medical assistance for disease that can be attributed to their work for the Department and the Nation, but also as veterans of the Cold War they fought on behalf of all of us.

Contrary to practices of public health that would be expected on behalf of any other population in American society, they have been denied routine interventive measures. To wait post mortem is nothing less than to conduct another human experiment to be exhumed by another Secretary at another time.

What we are describing did not happen in the 40s or 50s on someone else's watch. This human medical experiment is being conducted today on your watch.

In the last administration, Secretary Watkins did not dispute our facts. He bowed, we believe reluctantly, to the politics of the time. He made clear in the first meeting of his Environment, Safety and Health Advisory Committee that no action would be taken short of action in the courts, which has begun. In this administration, the Secretary and the Assistant Secretary said "no" to systematic monitoring for all retired and terminated workers, until they were forced to say "yes", at least in settlement of a law suit covering the Fernald, Ohio workers. (Please see the attached settlement.)

This usually happens in occupational health. It is unusual in community health. If cholera is traced to a community well, we no longer count more bodies before 1) we take off the pump handle, 2) treat the manifestly afflicted and 3) set up an intervention system - starting with notification - for those not yet with clinical disease.

We are arguing for the last step, a procedure established hundreds of years ago and exercised in civilized societies.

Dr. Snow uncovered the waterborne source of the cholera vibrio in London in 1854. He did not wait to establish the identity of the agent, which took another 30 years, before taking action. That policy lesson must be retaught to my colleagues in the Department of Energy.

Evidence of disease generated by environmental hazards among uranium miners, similar to diseases and hazards among nuclear workers today, was established four centuries ago. For many industrial diseases to which bomb factory workers are prone, the conditions and outcomes were described more than two centuries ago. For the balance, the evidence has been pouring in since the turn of the century. In all cases, there is sufficient etiological detail to put into place preventive and interventive measures. Yet a system of specialized medical care has never been put into place for any of the terminated workers.

There are some in the Department who may ask for more research to devise a plan of high risk management, ignoring studies costing billions of dollars by the National Cancer Institute and other divisions of the Public Health Service. There is no need for more research prior to action. It has been done sufficiently for blue collar and other populations at risk of environmental disease. We have been active participants in many of these studies. Moreover, Oak Ridge Associated Universities is close to completing a study among beryllium-exposed DOE facility workers that provides experience within DOE's own system. We also are participants in that study.

Moreover, there is a highly skilled high risk management unit within the National Institute for Occupational Safety and Health, associated with a national network of university resource centers to whom workers and physicians can be referred. The NIOSH centers were specifically created to be a national resource in occupational health and safety. Most are staffed and equipped for the kind of intervention appropriate in this case. That unit and the supporting centers can be activated today in a telephone call from Dr. O'Toole to the Director of NIOSH, Dr. Rosenstock.

Our members can have in place in a few days the simple, community-based program they desperately need. That telephone call will not set into motion a program in which all problems will be solved on the first day, but it would set into motion a program - like most public health programs - that can be adjusted for local circumstances and can integrate findings from on-going research that would assist these veterans of the Cold war.

In closing, we want to define as carefully as possible the program we believe can and should be put into place this week:

# Notification of possible medical problems to the worker, the family and the family physician.

# Retrieval on request of the worker or attending physician from the DOE computer data bases of chemical and physical agent exposures of the worker. Reconstruction of dose by DOE in the absence of adequate data.

# Referral of patients to selected clinics at the NIOSH resource centers.

# Payment for treatment of disease from the existing insurance and medicare programs, with coverage of the uninsured (in the absence of a comprehensive health security act) by the Department of Energy.

It is easy to be an advocate of the dead. It is harder to be an advocate of the living.

Thank you, again, for the privilege of appearing before you.

ORIGINAL

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

DAVID DAY, et. al. : Case No. C-1-90-067
Plaintiffs, : Hon. S. Arthur Spiegal
v. :
NLO, INC., et. al. :
Defendants. :

CLASS ACTION SETTLEMENT AGREEMENT

This Class Action Settlement Agreement sets forth the compromise and final settlement by and among the Settlement Class as defined below, defendants NLO, Inc. ("NLO") and NL Industries, Inc. ("NLI"), and the United States of America with respect to this litigation. This settlement is expressly conditioned on the Court approving the entire agreement as fair, adequate, and reasonable. It is hereby stipulated and agreed as follows:

I. EFFECTIVE DATE

The "Effective Date" of this Agreement shall be the day on which the Final Order and Judgment approving this settlement becomes final. For purposes of the Agreement, the Final Order and Judgment approving the settlement shall be deemed to become final on the later of (i) the thirty-first day after it is entered if no notice of appeal is filed or (ii) if a notice of appeal is filed, on the day following the date on which the Final Order and Judgment approving the settlement is not subject to further judicial review or appeal, either by reason of affirmance by a court of last resort or by reason of lapse of time or otherwise, provided that the Final Order and Judgment approving the settlement are not reversed or substantially modified by this Court or an appellate court, in which case this Agreement shall be null and void.

II. THE SETTLEMENT CLASS

A. The Operative Class Definition. The Settlement Class, certified pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, shall be defined as follows:

All persons who were employed by NLO at the Feed Materials Production Center (FMPC) for six consecutive work weeks (hereinafter, the "Employee Class Members"); and all persons who were employed by a contractor to NLO and who were present at the FMPC for at least six consecutive work weeks and who were no longer present at the FMPC after December 31, 1981 (hereinafter, the "Subcontractor Class Members"). This class does not include any persons who were members of the class certified in *re: Fernald Litigation*, Case No. C-1-85-149, provided that this does not foreclose participation by those persons who represent the estates of deceased Employee Class Members. Class Counsel may request that this class not include persons who were paid consultants to NLO in connection with *Day* et al. v. *NLO* et al., Case No. C-1-90-067.

B. *Subclasses*. For purposes of this Class Action Settlement Agreement and the administration thereof, the class shall be divided into the following subclasses:

Subclass I

Employee Class Members who are still living

Subclass II

Subcontractor Class Members who are still living

Subclass III

The estates of deceased Employee Class Members

III. THE TRUSTEE AND THE TRUSTEE'S ADVISORS

The Settlement Trustee. Pursuant to Rule 53 of the Federal Rules of Civil Procedure, the Court shall appoint a Trustee/Special Master (hereinafter referred to as "the Trustee") to carry out the terms of this Class Action Settlement Agreement that relate to the medical monitoring program described in Section IV and to the Supplemental Fund described in Section V. At the Trustee's discretion, the Trustee may retain the services of persons qualified to assist and advise the Trustee with respect to the operation of the medical monitoring program and the Supplemental Fund.

IV. THE WORKERS' MEDICAL MONITORING PROGRAM

A. *The Workers' Medical Monitoring Program*. The Workers' Medical Monitoring Program (WMMP) shall be established by the Trustee to provide a medical monitoring program for eligible members of Subclass I and Subclass II. The nature, content, structure, and operation of the WMMP shall be determined by the Trustee through appropriate protocols, which shall be subject to the approval of the Court. To the extent feasible and appropriate in light of the further provisions of this agreement, the WMMP shall take advantage of the protocols and systems already in place and developed in connection with the *In re Fernald* medical monitoring program.

B. *Eligibility*. Each member of Subclass I shall be eligible to make application to participate in the WMMP. Those members of Subclass II who either (i) worked in production areas continuously for at least one year (i.e., at least 50 out of 52 weeks) or (ii) worked in production areas continuously for at least 9 months and worked in such areas for an aggregate of 2 years, also shall be eligible to make application to participate in the WMMP. Class members' applications to participate in the WMMP shall be submitted to the Trustee before an appropriate pre-announced deadline, which shall be established by the Court but which shall not be more than one year after the Effective Date. The content of the application form and the criteria for confirming eligibility under this paragraph shall be determined by the Trustee, subject to approval by the Court. Within 90 days after the application deadline, the Trustee shall provide DOE and Class counsel with a list of the names of those persons whom the Trustee has found to be eligible within the meaning of this paragraph.

C. *Examinations*. Once a claimant's eligibility for the WMMP has been confirmed by the Trustee, the claimant will be entitled to an initial physical examination and will be eligible to receive annual follow-up examinations for the remainder of his or her life.

D. *Payment of WMMP Costs by the United States of America*. The United States of America agrees to pay the costs associated with operating the WMMP, subject to the following limitation: the total amount to be paid by the United States of America to cover the costs associated with the WMMP (including, but not limited to, costs of examinations, administration costs, fees and expenses of the Trustee related to medical monitoring, and costs relating to work performed by the Trustee that relate to the WMMP) shall not exceed the aggregate of (1) eight hundred dollars ($800) for every initial examination actually given under the WMMP, and (2) four hundred fifty dollars ($450) for every annual follow-up examination actually given under the WMMP. These caps will be adjusted annually on each anniversary date of the Agreement to reflect the average change for the preceding twelve month period in the U.S. City Average Consumer Price Index for all urban consumers ("CPI-U") as published by the Bureau of Labor Statistics. Such adjustments based on the CPI-U will be prospective only. They will apply only to examinations actually given in the twelve month period following the adjustment. No other adjustment to these caps will be permitted. The United States of America agrees to pay to the Trustee by October 31, 1994 the sum of $2.5 million ($2,500,000) and an additional $2.5 million ($2,500,000) by October 31, 1995. The Trustee will place these funds in a DOE-approved escrow account (bearing an appropriate rate of interest) until the Effective Date. In the event that this agreement is not approved or in the event that the Final Order and Judgment are reversed or substantially modified, the escrowed funds and all interest will be returned to the United States of America within 10 days. Upon the Effective Date, the Trustee will deposit the amounts described in this paragraph in an appropriate interest bearing account or other investment approved by the Court. Such interest shall be used to defray the costs of the WMMP. By each yearly anniversary of this Agreement, the Trustee will determine whether the amount of funds already paid and on hand will be sufficient to cover the reasonably anticipated costs of the WMMP for the upcoming twelve month period. If the Trustee concludes that the amounts on hand are not sufficient, the Trustee shall certify that conclusion in writing and submit a copy of this certification and supporting information to the United States Department of Energy ("DOE"). At the same time, the Trustee will certify in writing to the DOE (with supporting information) the amount of additional funds that the Trustee has determined are necessary to cover the reasonably anticipated costs of the WMMP for the upcoming twelve month period. Within thirty (30) days of receipt of this information, that amount shall be paid by the DOE to the Trustee. Any dispute concerning the certification shall be submitted to the Court for expedited decision. The obligation of the United States of America to make any payments in connection with the WMMP shall cease upon the death of the last class member the Trustee has confirmed is eligible for participation in the WMMP. Upon the death of such class member, any unused amounts (including interest) paid by the United States shall revert to the United States.

E. Workers' Compensation. It is agreed that the United States of America, DOE, and NLO (if necessary) shall refrain from initiating any appeal (and shall instruct the operative FMPC employer of record not to initiate an appeal) pursuant to O.R.C. § 4123.512 of a Final Order of the Ohio Industrial Commission made under O.R.C. § 4123.511(E) with respect to any worker's compensation claim filed by a member of Subclass I and Subclass III for an occupational disease allegedly arising out of exposure to radioactive or toxic materials in the course of employment at the FMPC, irrespective of the decision of the expert panel as described below.

It is further agreed that the determination (pursuant to Section 4123-3-09B) to accept or deny the validity of claims filed for occupational disease (allegedly arising out of exposure to radioactive or toxic materials in the course of employment at the FMPC) shall be made upon the recommendation of an expert panel. The expert panel shall be composed of three experts appointed by the Court as follows: Class counsel and the Department of Energy each shall have the right to select one expert. The third expert will be selected by agreement of the first two experts. If agreement cannot be reached, the third expert will be selected by the Court. Upon filing of a claim for occupational disease (allegedly arising out of exposure to radioactive or toxic materials in the course of employment at the FMPC) the expert panel shall, within 75 days of the date of filing, make a recommendation as to whether the claim should be accepted or rejected. This recommendation shall be based upon reasonably available documentation. The United States of America, the Department of Energy, and NLO (if necessary) shall accept this recommendation and shall instruct the operative FMPC employer of record to accept this recommendation. None of the three panel experts shall participate further in the claims process. The reasonable compensation and expenses of the three panel experts will be reimbursed by the DOE, and not subject to the caps set forth in paragraph D.

F. Trustee Fees. Any payments relating to the administration of the WMMP or services provided by the Trustee relating to medical monitoring shall be paid solely from the WMMP, subject to the $800/$450 limitations set forth in paragraph D. above.

V. THE SUPPLEMENTAL FUND

A. The Amount of the Supplemental Fund. In addition to the payments required and provided for in Section IV above, the sum of fifteen million dollars ($15,000,000.00) shall be paid to the Trustee by the United States of America on behalf of defendants NLO and NLI. This fund shall be referred to hereinafter as the Supplemental Fund. This fund shall be payable as follows: By October 31, 1994, the United States of America shall pay to the Trustee the sum of $7.5 million dollars ($7,500,000.00); by October 31, 1995, the United States of America shall pay to the Trustee the additional sum of $7.5 million dollars ($7,500,000.00). There shall be no interest due or owed on either installment of $7.5 million dollars ($7,500,000.00) so long as each such payment is made in a timely fashion. The Trustee will place these funds in a DOE-approved escrow account (bearing an appropriate rate of interest) until the Effective Date. In the event that this agreement is not approved or in the event that the Final Order and Judgment are reversed or substantially modified, the escrowed funds and all interest will be returned to the United States of America within 10 days. Upon the Effective Date, the Trustee will deposit the amounts described in this paragraph in an appropriate interest bearing account.

B. Compensation for Employee Class Members. Each member of Subclass I shall be eligible to make a claim for cash compensation from the Supplemental Fund.

C. Compensation for Subcontractor Class Members. Each member of Subclass II who worked at the FMPC for at least one year in the aggregate shall be eligible to make a claim for cash compensation from the Supplemental Fund.

D. Compensation for Estates in Subclass III. The estate of any deceased Employee Class Member shall be eligible to make a claim for cash compensation from the Supplemental Fund.

E. Distribution to Claimants. Claims for cash compensation from the Supplemental Fund shall be submitted before an appropriate pre-announced deadline, which shall be established by the Court. Once the established deadline has passed, and once the eligibility of claimants has been confirmed by the Trustee, cash compensation from the Supplemental Fund shall be distributed among the approved claimants. The formula for distribution of cash compensation from the Supplemental Fund shall be based on the number of years each claimant or claimant's decedent worked at the FMPC.

F. Other Uses of Supplemental Funds. In addition to or in lieu of cash payments to Class Members, the Supplemental Fund may be used for any other purpose that the Court determines is appropriate and for the benefit of Class Members. Neither NLO, NLI nor the DOE will take any position regarding the appropriateness of any such other uses.

G. Fee Awards: Class Counsel shall submit to the Court their application for attorneys' fees and expenses. The Court shall then determine an appropriate award. Neither NLO, NLI nor the DOE will take any position regarding fees and expenses sought by Class Counsel, but NLO, NLI and the DOE reserve their right to respond to statements of fact made in Class Counsel's application. Any amount awarded by the Court shall be paid solely from the Supplemental Fund.

H. Trustee Fees. Any payments relating to the administration of the Supplemental Fund or services provided by the Trustee that relate to the Supplemental Fund shall be paid solely from the Supplemental Fund.

VI. RELEASE

Claims Released and Reserved Under This Settlement. Upon the Effective Date, the Settlement Class shall release with prejudice, acquit, and forever discharge NLO, NLI, and their past and present directors, shareholders, officers and employees, and the United States of America and its officers and employees from any and all past, present or future actions, causes of action, claims, demands, damages and losses asserted in this litigation or which could have been asserted and which arose out of the Settlement Class' employment at the FMPC and the facts alleged in this litigation. This Release is without prejudice to any past, present, or future claims (including Worker's Compensation or intentional tort claims)

for actual physical injury or disease, and no such claims are released under this agreement.

VII. CONTINUING ROLE OF THE COURT

The Court. The Court shall retain jurisdiction over all matters pertaining to this litigation, including the administration of this settlement.

VIII. NO ADMISSION OF LIABILITY

This Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in this Agreement nor any action taken hereunder shall constitute or be construed as any admission of the validity of any claim or any fact alleged by plaintiffs in the litigation or of any wrongdoing, fault, violation of law, or liability of any kind on the part of defendants or the United States of America. This Agreement shall not be offered or be admissible in evidence against any of the parties to this Agreement or cited or referred to in any action or proceeding, except in any action or proceeding brought to enforce its terms or in defense of any claims brought by Settlement Class Members.

IX. ACCESS TO BOOKS AND RECORDS

The books and records of the Trustee and books and records pertaining to all activities relating to the MMSP (excluding medical records) shall be maintained and made available on request to the DOE.

THIS CLASS ACTION SETTLEMENT AGREEMENT IS EXECUTED THIS 25th DAY OF JULY, 1994. APPROVED AND AGREED TO BY:

For the Settlement Class:	For Defendants NLO and NLI:	For the United States of America:
______________	______________	______________ General Counsel Department of Energy

for actual physical injury or disease, and no such claims are released under this agreement.

VII. CONTINUING ROLE OF THE COURT

The Court. The Court shall retain jurisdiction over all matters pertaining to this litigation, including the administration of this settlement.

VIII. NO ADMISSION OF LIABILITY

This Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in this Agreement nor any action taken hereunder shall constitute or be construed as any admission of the validity of any claim or any fact alleged by plaintiffs in the litigation or of any wrongdoing, fault, violation of law, or liability of any kind on the part of defendants or the United States of America. This Agreement shall not be offered or be admissible in evidence against any of the parties to this Agreement or cited or referred to in any action or proceeding, except in any action or proceeding brought to enforce its terms or in defense of any claims brought by Settlement Class Members.

IX. ACCESS TO BOOKS AND RECORDS

The books and records of the Trustee and books and records pertaining to all activities relating to the FMMP (excluding medical records) shall be maintained and made available on request to the DOE.

THIS CLASS ACTION SETTLEMENT AGREEMENT IS EXECUTED THIS ____ DAY OF JULY, 1994. APPROVED AND AGREED TO BY:

For the Settlement Class:	For Defendants ~~NLO and~~ NLI:	For the United States of America:
______________	Dennis G Newkirk VP + CONTROLLER NL INDUSTRIES, INC.	______________

for actual physical injury or disease, and no such claims are released under this agreement.

VII. CONTINUING ROLE OF THE COURT

The Court. The Court shall retain jurisdiction over all matters pertaining to this litigation, including the administration of this settlement.

VIII. NO ADMISSION OF LIABILITY

This Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in this Agreement nor any action taken hereunder shall constitute or be construed as any admission of the validity of any claim or any fact alleged by plaintiffs in the litigation or of any wrongdoing, fault, violation of law, or liability of any kind on the part of defendants or the United States of America. This Agreement shall not be offered or be admissible in evidence against any of the parties to this Agreement or cited or referred to in any action or proceeding, except in any action or proceeding brought to enforce its terms or in defense of any claims brought by Settlement Class Members.

IX. ACCESS TO BOOKS AND RECORDS

The books and records of the Trustee and books and records pertaining to all activities relating to the WMMP (excluding medical records) shall be maintained and made available on request to the DOE.

THIS CLASS ACTION SETTLEMENT AGREEMENT IS EXECUTED THIS ____ DAY OF JULY, 1994. APPROVED AND AGREED TO BY:

For the Settlement Class:	For Defendants NLO [redacted]:	For the United States of America:
______________	Manager, NLO, Inc.	______________

for actual physical injury or disease, and no such claims are released under this agreement.

VII. CONTINUING ROLE OF THE COURT

The Court. The Court shall retain jurisdiction over all matters pertaining to this litigation, including the administration of this settlement.

VIII. NO ADMISSION OF LIABILITY

This Agreement is for settlement purposes only, and neither the fact of, nor any provision contained in this Agreement nor any action taken hereunder shall constitute or be construed as any admission of the validity of any claim or any fact alleged by plaintiffs in the litigation or of any wrongdoing, fault, violation of law, or liability of any kind on the part of defendants or the United States of America. This Agreement shall not be offered or be admissible in evidence against any of the parties to this Agreement or cited or referred to in any action or proceeding, except in any action or proceeding brought to enforce its terms or in defense of any claims brought by Settlement Class Members.

IX. ACCESS TO BOOKS AND RECORDS

The books and records of the Trustee and books and records pertaining to all activities relating to the WMMP (excluding medical records) shall be maintained and made available on request to the DOE.

THIS CLASS ACTION SETTLEMENT AGREEMENT IS EXECUTED THIS 26th DAY OF JULY, 1994. APPROVED AND AGREED TO BY:

For the Settlement Class:	For Defendants NLO and NLI:	For the United States of America:

Biography
Sheldon W. Samuels

.... is Executive Vice President of the Ramazzini Institute for Occupational and Environmental Health Research and of the Workplace Health Fund (of the Industrial Union Department/AFL-CIO) and Assistant to the Executive Director for Policy and Research for the Carpenter's Health and Safety Fund. He is a Lecturer on the faculties of Mt. Sinai School of Medicine and the Johns Hopkins University Health Policy Program.

From April 28, 1971 to his retirement on August 1, 1994, Mr. Samuels was Director of Health, Safety and Environment for the Industrial Union Department of the AFL-CIO.

Samuels was previously employed by The University of Chicago (1951-1959), Albert Schweitzer Education Foundation (1959-1960), New York State Health Department (1960-1968), U.S. Public Health Service and Environmental Protection Agency (1968-1971). While in these positions, he taught philosophy at Fulton-Montgomery Community College (1965) and environmental policy as Director of the Environmental Health Institute of the State University of New York at Cortland (1966-67) and the University of Cincinnati (Lecturer,1970-71).

He has lectured on environmental policy in 14 countries and at the Foreign Service Institute on behalf of the Departments of State and Labor, as well as at Harvard, Wisconsin, Johns Hopkins, Syracuse, a dozen other universities, and the Los Alamos, Argonne, Oak Ridge and Brookhaven National Laboratories. In 1977, he addressed the semi-annual meeting of the Chemical Manufacturers' Association ("Toxiciology For Tycoons") and conducted a seminar on the same topic for the environmental policy staff of ARCO Chemical Company in 1991. In 1989, he presented the "Giants In Occupational Health Lecture" at the University of Utah.

Samuels designed and taught the labor movement's initial work environment education programs and the hazardous materials disposal training courses. He developed the NIEHS National Clearinghouse for Hazardous Waste Materials and Education. He developed the first NIOSH-funded training program for union professionals, in Ergonomics, with Alabama, California, Wisconsin and Hunter Universities, now in its seventh year.

In 1978, he was appointed by the President to the National Cancer Advisory Board. As chairman of the Board's Committee on Environmental Carcinogenesis, he was the primary author of the NCAB report on Quantitative Risk Assessment. He has served on select committees in government and the private sector, including those of the International Labor Office (standards), National Academy of Science (toxic substances), the National Institute of Environmental Health Science (research priorities), Blue Cross Association, Academy of Natural Sciences (Environmental Assessment Council), Department of Commerce (Technical Advisory Board), Department of Health and Human Services (Commission on Graduate Medical Education), Chesapeake Biological Laboratory (UMD), Environmental and Occupational Health Sciences Institute (NJ) and Congressional

Office of Technology Assessment (genetic testing). He serves on the Department of Energy's Environment, Safety and Health Advisory Committee and a board-appointed committee of the Sierra Club.

An elected Fellow of the New York Academy of Sciences and Collegium Ramazzini, Mr. Samuels received a Special Commendation of the Environmental Protection Agency (1972), the William Steiger Memorial Award of the American Conference of Governmental Industrial Hygienists (1987) and the Rene Dubos Award (1988). He is Contributing Editor of the American Journal of Industrial Medicine.

He is conducting ecological studies of human values among uranium miners on the Colorado Plateau and in the Erz Gebirge and among genetically tested workers at DOE nuclear weapons facilities.

Samuels has been awarded research and education grants from unions, ORAU, OASH (DHHS), OSHA, NIOSH, NCHGR, DOE, NEH, EPA, German Marshall Fund, CF Foundation, NCI, NIEHS and corporate foundations.

In his early (1951 - 1967) career in Chicago and Albany, he was an active journalist: News Editor, Bridgeport (Chicago) News; producer-writer, "Books In The Making" (13 week series, Educational Radio Network); producer, "Sounds of Chicago" (FM-TV pilot simulcast); writer-anchor, environmental news program, WAMC-FM (Albany, NY); weekend night city editor for Albany Times-Union; and reporter for the Schenectady Gazette and numerous newsletters; Consulting Editor, Oceana Publications; "ghost", "Elm Street Politics" by Steve Mitchell (Adlai Stevenson's campaign manager); and script "doctor" for two award-winning documentary films. He has renewed this interest and is writer-producer of a pilot program for television on occupational health: "The Selikoff Agenda". He was selected by the late Irving J. Selikoff to co-author a book of personal papers and biography, a continuing project.

Samuels was a preceptorial student of Theoretical Biology in the College (AB'51) and Graduate School (Philosophy, Anthropology, Developmental Biology) of The University of Chicago, where he received support from the University and the Wilkie Foundation. He also received training in Public Administration and Education at the State University of New York (Albany), and Environmental Science at the Taft Sanitary Engineering Center (Cincinnati).

Born December 7, 1929 at St. Johnsville, N.Y., his early education was in public schools in the Mohawk Valley, where in 1948 he received a Bausch and Lomb Science Award for a tutorial research project in Soil Microbiology arranged with the Selman A. Waksman Laboratory at Rutgers University.

August 9, 1994

Mr. INSLEE. Thank you, Mr. Samuels.

Mr. Fawell.

Mr. FAWELL. Much of my thoughts—I guess I expressed them to Ms. O'Toole; and as I hear the testimony of all three of you—Mr. Conway, Mr. Wells especially, because your responsibilities are indeed to critique and do so objectively and fairly—as I listened to what you have said, plus also information that has been given to the Members of this committee.

For instance, the General Accounting Office, this is set forth in regard to the basic reason for this hearing; it says, the General Accounting Office in its June 1994 report Nuclear Safety: Unresolved Issues Could Impair DOE's Oversight Effectiveness, also expressed concerns about the authority, the independence and the technical capability of ES&H. You know, that is saying an awful lot when you are deeply concerned about the independence and the technical capabilities.

And, Mr. Conway, I took rather copious notes as you were testifying. You are pointing out, I think, some practical common sense about the main contractor having inculcated into his contract the basic responsibilities that you mentioned, 51 key points that everyone seems to be aware of and, yet for some reason, this isn't being done. But this doesn't take, I guess, a rocket scientist or anyone else a great deal of time to at least currently protect the situation in regard to workers in the contract that are being hired right now. As I put this all together, I have to ask the question again, maybe there is a better way of doing it than assigning it to an Assistant Secretary who is within a very, very large political entity—and I say that "political" in the best sense of the word—where she is but one voice in the wilderness asking for money and things of this sort.

And perhaps having an entity that is more capable of operating and without conflicts of interest, as these responsibilities, much like OSHA has responsibilities of safety and health and that is their only responsibility. That is a big one, but that is their expertise, and they do it all the time; whereas this particular office within the DOE is supposed to have this responsibility. Obviously, they are not getting the money, they are not getting the technical expertise.

Mr. Wells and Mr. Conway, I know there is cautious optimism now, and that is something nice, but would you say that Congress ought to look at some more independent, more specialized entity outside of the DOE that will assume these occupational safety and health responsibilities?

If either one of you would like to respond——

Mr. CONWAY. Well, if I may, the Congress has already put a requirement on our board to make such recommendations in our fifth annual report. That fifth annual report is due when the President's next budget comes to the Congress, which undoubtedly will be February. We are in the process right now of preparing our thoughts in that regard.

The month of October we will be holding public hearings at practically each and every one of the major defense sites in which we will be giving an opportunity for the local workers and the public to comment along these lines. And then once we do that, we will be holding some hearings here in Washington, D.C., to which we will invite the Secretary herself and her key personnel to give us their views, so that we can incorporate all of these various views into our decision-making as a collegial body, and we will then be making our recommendation to the Congress.

However, let me point out—and I think Dr. O'Toole mentioned—regulation by itself will not make things go safely. On the other hand, if you don't have regulation doesn't mean you are not safe.

I cite, for example, the naval program, the nuclear naval program. They are not under our jurisdiction. The Congress, because it was satisfied with the safety record of the nuclear Navy and how it was being operated and how they deal with their contractors and their line management, how it holds the contractors to safety standards and procedures and has its own internal review; and the Congress said they recognized that. And they are not under our review, and they have an excellent safety record; they are within the DOE as a small group over here.

So I suggest to you regulation, outside regulation per se, is not necessarily the answer. There is no reason why DOE—other than the nuclear Navy portion, and that is under DOE; it is within DOE—why the rest of the DOE can't do the same thing. But they have got to get line management personnel out in the field. You cannot do it with 20,000-plus people and have only 5,200 out supervising the work in the field when the work is out in the field. And they have got to get their people out and make them do the work they are supposed to be doing.

There is no reason they can't do it. We look at some of these contracts; each one is written differently. They sit down and they start de novo. It is boilerplate. You can write boilerplate language that you insist goes into every contract you issue from the Department, and it has to incorporate that they meet those 51 or they may not all be applicable to the particular job, but they are required to meet those specific safety standards and the procedures that go with them.

Now, if the contractors don't like it, they don't have to bid on the job. But they know that is what they are going to be held to.

We keep hearing when we go out and we talk to contractor personnel, their top management says, oh, it is too expensive if we have to meet those standards and all those procedures; we need more money and we want to open up our negotiations with the DOE. And the DOE says, well, I think it is going to cost a lot of money.

I have had people at DOE say, well, if we force them to do this, it is going to cost a lot of money; it is very expensive to force them to do that. Well, that is baloney. It is a requirement; you put out the orders, you make them meet those orders, and you put it in the contract. And if they don't, you don't give them their bonuses; or if they don't do it, you take them off the job and get another contractor. And the contractor knows ahead of time if he wants to bid on the job that is what he is going to be held to. It is not that difficult.

And these new contracts, I would like to see some of these contracts when they come through. I don't get involved in contract negotiations or the selection of contractors, but they are opening up bids now for new contractors; they will be out at Hanford, Idaho Falls, Rocky Flats.

EG&E, they have 15 more months to go and they decide they would like to get somebody else to take it off their hands and they don't want to be bidding it. That was one of the places we have really been banging on for not meeting safety standards, and that is one of the places we feel, in the four years we have been observing, they have not been stabilizing some of the material that is in interim storage and cannot continue the way they are going. And that is one of the places we have said, if you don't get it done within the next two or three years and put it in a more stable form, we are really going to be have almost imminent hazards develop. Very unhappy with that. EG&G is suddenly walking away from that job or announcing that in 15 more months they are through on their contract. They are the best people to leave anyway.

Mr. INSLEE. Mr. Wells.

Mr. WELLS. Mr. Fawell, you are 100 percent right. That is a very valid question that needs to be asked. Should DOE be subject to external regulation? Our view is that while it is a complex question, it is a major step that probably will require a lot of careful consideration because there are pros and cons no matter which way you go. A clear advantage to external regulation would be the ability of an external source, whether it be NRC or anyone else, to bring a lot more authority and a lot more credibility than anything DOE now has internally.

A disadvantage to bringing in an external regulator would be the great difficulty in gearing up and dealing with the vast, complex problems that DOE has, because DOE is truly a unique animal in terms of what it is faced with versus some—what the other private industry is. I think it is a very fair question that needs to be put on the table and addressed, and as Dr. Conway pointed out, there are some costs associated with decisions about the resources that it would take to do external regulation.

Mr. FAWELL. All of which the private sector has been lamenting ever since OSHA came into being. You will have that kind, I think, of a problem undoubtedly; and I suppose a lot of the line management people aren't too happy bothering with things like that, either, when you come right down to it. So—which means—it will mean that those who have a responsibility of oversight, they simply have to hammer home the thought with line management, that is the kind of contractor you have to have, et cetera, et cetera. But the oversight people don't have the money or the expertise.

Congress, interestingly enough, came up with the Defense Board. They realized that it was probably necessary, I gather, to have that kind of expertise; but it became advisory as Mr. Conway points out, which means that they will listen to you—they have to—and they may follow, they may do something about it, and they may not.

Mr. CONWAY. If I may add at that point, by law they are required, once they accept our recommendation, within a 90-day period of time, the Secretary is required to come in with an implementation plan and then the board reviews that implementation plan to see if it is adequate to do the job. And then we follow it through as they implement it, the recommendation.

We have closed down, I think, in the order of eight or nine of our sets of recommendations, to date. Others, we are continuing to follow through. Some cannot be completed within a year, which the law requires it be completed within a year or explain to the Congress why it cannot be completed within a year. That is the implementation plan.

But we continue to follow through on the implementation plan to assure that it meets the objectives of our recommendation. And if we don't like the implementation plan, we go back and we hammer it out with them until they get an implementation plan that meets the objective and objectives of our recommendations. So it can be—it can be implemented and done properly.

Mr. FAWELL. Thank you very much. I have learned a lot by listening to what you gentlemen have testified to. And I look forward to—I assume you might be communicating with us in reference to what will come about in reference to the meetings that you have referred to.

Mr. CONWAY. Yes, sir.

Mr. FAWELL. I thank you.

Mr. INSLEE. Thank you, Mr. Fawell.

Mr. Samuels, could you tell us, there has been discussion about stakeholders being involved in this process of trying to develop a realistic and effective program for former employees.

Could you tell us, do you anticipate other labor organizations being willing to be involved in that process or such disenchantment that you think that isn't going to be productive?

Mr. SAMUELS. Mr. Chairman, obviously I am very impatient because I have listened to seven Assistant Secretaries of DOE for health, and they have all had, whether they use the word "stakeholder" or not, they have all had the same process, gone through the same planning, asked the same questions, and had the same gyrations. Of course, if you ask workers' representatives to participate in plans that will determine the fate of their health and the health of their families, of course they are going to participate.

The point is, haven't we already done that? Haven't we already had endless studies? Haven't we already had endless stakeholder meetings? Does one administration have to forget entirely what six others did? Isn't there any institutional memory? When are we going to get on with the job of protecting people's health? Or are we going to still have commissions and boards and group dynamicists run the government? That, sir, is my response.

Mr. INSLEE. What do you think, if you were going to pick one thing that was most pressing regarding health in former workers, what would it be? Are we talking about annual or semiannual physicals? Are we talking about—I mean in your idea, what is the highest, most pressing priority?

Mr. SAMUELS. The most pressing thing is the simplest thing and also will be the most effective thing. They have in their computers the locations of these former workers. You have to be sure that that information is kept up to date. But that is a simple clerical process. But once they do that, they must then communicate with that family, if not the worker, him or herself, and the family physician, with information in a form which the family physician and the family can use. I must tell you that medical science doesn't have an encyclopedia with do-it-yourself instructions that are always successful.

Most of what will happen will probably be a failure. But a great deal will happen that will be successful because there is important information that that worker, that family and that worker's family needs, and the provider, the primary-care physician needs. They need information they can use.

That is the most important single step. And part of that information is a reference, saying: "Doctor, if you have a question, here is a specialist in Ann Arbor, or here is a specialist in Seattle, who can help you. This is the telephone number. It is an 800-number. You don't even have to pay for the call." That is all DOE has to do as the first step. And that is 85 percent of the total problem.

Mr. INSLEE. I am just thinking off the top of the head, which is a dangerous place to think, but is it possible to break down that kind of information by State, for instance?

Mr. SAMUELS. Yes. Absolutely. You, in your wisdom in the Congress, have spent billions of dollars creating all kinds of systems. They are available on a regional basis. They are not in every State. But I must say that where I believe our former workers, our former members—you have to realize, we are pleading for people who are not usually still members but we have an obligation to them—tend to be concentrated, I believe that they do have resources sometimes, perhaps even usually, a local telephone call away.

Yes, we can break it down, and we can make resources available. We have the system in place if we will only use it. Now, this doesn't mean that we don't need more information or that the national unions here in Washington shouldn't be consulted, which is actually what Dr. O'Toole is talking about. Of course, we want all those things. But while that is going on, there are people hurting today. What are we doing today? And the answer, sir, is nothing.

Mr. INSLEE. Thank you. Appreciate that, Mr. Samuels.

Mr. Conway, you made an allusion to the fact that having one single integrated contractor on a site makes safety consistency easier, and I think I heard you suggest that that really ought to be the model. Is that something that might be addressed by your group in its next round of recommendations?

Mr. CONWAY. I don't know. I would have to take that up with my other board members since we are a collegial body.

The thing I see over the years I have been involved in nuclear matters—that goes back to 1956 with the government facilities—that whenever you split out among a number of contractors and give them individual jobs without one being responsible for the completed project, a systems engineering approach, if you will, invariably you have a mishmash. We have buildings that have been completed that cannot go into operation because they—when they were finally built with various contractors building or being responsible for various portions of the construction, design and construction, it doesn't fit together.

You have one—371, Building 371, the most modern building in Rocky Flats, could not be operated because we had so many individual contractors and no one contractor, no one individual within the DOE also specifically responsible for that particular facility from a design basis right through to construction.

We have one right now down at the Nevada Test Site that was a Corps of Engineers project with various contractors working on it. So that is completely separate from my responsibility on "safety," other than the fact that if it is not done right, we may have safety problems.

So whether it is a construction job, whether it is a cleanup job, whatever it is, you have got to select one organization that is responsible with that individual contractor. You are responsible for it. You can subcontract to others or the DOE can select some others to do some R&D for you, but you are responsible for setting the objective that the individual contractors have got to—the subcontractors have got to meet. You cannot delegate to individual contractors and expect the thing to get—the jigsaw to be put together properly. So that is the point I make. And again, I would hold the prime contractor responsible to assure the health and safety standards are being met by all of his subcontractors, and I would require the line manager of DOE to be responsible.

One of the things we have been pushing—and we made a recommendation on, that the key facilities out at the sites have to have a DOE facility representative who in DOE at the field office is responsible for that specific facility. We have found, for example, one of the most hazardous ones, in our opinion, right now at Hanford is the KE Basin.

I went out, nobody at DOE, there was no facility representative. They contracted it out to a contractor to do DOE's responsibility of having a DOE facility rep that personally was responsible for that. We pushed them. They finally got one. He is pretty much still in training. But that is what you have got to do. You have to pin responsibility. Somebody has to own the job. Somebody has to own the entire project. And when you start to tear down these facilities, you have to have someone specifically responsible.

In the case of the tanks out at Hanford, you have got to have someone who is responsible, who at DOE is specifically responsible in line management for the cleanup of those tanks. And what particular contractor is responsible?

And then you can bring in R&D people; he can bring in other subcontractors, research laboratories. One of them has got to be responsible and run the job. And if they are not willing to do it, then get rid of them, get somebody else. That is the only way you can do anything in the engineering, technical field.

Mr. INSLEE. Thank you.

Mr. Fawell, anything else?

Mr. FAWELL. No, I don't have anything.

Mr. INSLEE. Well, gentlemen, thanks very much. I have learned a lot. I hope others have as well. And with that, we will stand adjourned.

[Whereupon, at 3:40 p.m., the subcommittee was adjourned.]

LAW OFFICES
CONNERTON, RAY & SIMON
1920 L STREET, N W
FOURTH FLOOR
WASHINGTON, D.C 20036-5004
(202) 466-6790

FACSIMILE
(202) 659-3458

WRITER'S DIRECT DIAL NUMBER

ROBERT J. CONNERTON
DAVID W. ELBAOR
THEODORE T. GREEN
JAMES S. RAY
PHILLIS PAYNE
LAURENCE E. GOLD
RONALD SIMON
TERESE M. CONNERTON
JOHN McN. BROADDUS
DANIEL S KOZMA
DAVID L. MALLINO†
DIRECTOR OF GOVERNMENT AFFAIRS

PAUL GREENBERG
SHEPARD A. HOFFMAN*
DEBORAH K. HINES
MICHAEL BARRETT
NANCY S HYDE
ANN C. BERTINO**

JACK CURRAN†
LEGISLATIVE DIRECTOR

PAUL F. NEWHOUSE***
OF COUNSEL

†NOT A MEMBER OF THE BAR
*ADMITTED ONLY IN CA, MD, MA, PA
**ADMITTED ONLY IN PA
***ADMITTED ONLY IN MD

October 6, 1994

Honorable Marilyn Lloyd
Chairman
Subcommittee on Energy
U.S. House of Representatives
H2-390 Ford HOB
Washington, DC 20015

Dear Madam Chairman:

Please accept the enclosed statement of John B. Moran, Director of Occupational Safety and Health, Laborers' Health and Safety Fund of North America, for the official record of the subcommittee's hearing on issues involving the Department of Energy's health and safety strategy.

Your attention in this matter is greatly appreciated.

Sincerely,

David L. Mallino, Jr.

STATEMENT OF:

JOHN B. MORAN
DIRECTOR, OCCUPATIONAL SAFETY AND HEALTH
LABORERS' INTERNATIONAL UNION OF NORTH AMERICA

TO:

UNITED STATES HOUSE OF REPRESENTATIVES
SPACE AND TECHNOLOGY COMMITTEE
ENERGY SUB-COMMITTEE

REGARDING:

DEPARTMENT OF ENERGY: HEALTH AND SAFETY STRATEGY
OVERSIGHT HEARING
SEPTEMBER 22, 1994

The Laborers International Union of North America (LIUNA) represents about 700,000 members in the United States and Canada. About 450,000 of these members are construction laborers, the largest single craft in the construction industry representing some 20% of construction employment in the United States. The Federal Government lists some 286 jobs as among those performed by construction laborers, including demolition which is nearly exclusively a construction laborer craft, making this craft the most diverse of any in the construction trades.

As our Nation has embarked upon efforts to manage and eliminate the hazards associated with asbestos, lead-based paint and hazardous wastes, construction laborers have emerged as the primary construction craft engaged in these activities. LIUNA construction laborers, specifically, are the leading union craft in these high hazard activities.

LIUNA construction laborer members are also those that built our Nations nuclear weapon complex. Many of these men and women remain employed in the DOE weapons complex facilities today. As DOE begins to engage the environmental restoration mission, construction laborers will be the primary construction craft in the environmental restoration and decontamination-decommissioning-demolition work force.

The training and employment of LIUNA construction laborers into the high hazard construction activities associated with asbestos abatement, lead-based paint activities and hazardous waste remediation has been approached with great concern and dedicated efforts to assure the short and long term wellbeing of the members who seek to engage in this work. The training programs developed and partially funded by the government reflect a serious and dedicated focus on the safety and health of workers who intend to engage in this work. The dedicated training programs provided LIUNA members in these areas, far exceed the Federal minimums and are recognized as being the very best in the Nation.

In response to the expanding work in these high hazard construction activities, LIUNA has spearheaded a dedicated focus and emphasis on occupational safety and health. Indeed, the leadership of LIUNA in the area of construction safety and health, directly and through its affiliated trust funds the Laborers Health and Safety Fund and the Laborers-Associated General Contractors Education and Training Fund (L-AGC), is recognized both nationally and internationally.

In achieving the commitment to occupational safety and health to its members, LIUNA and its affiliated Funds, have focused attention on a wide range of fronts. All L-AGC training program have safety and health integrated into the skills training curriculum, not as a separate additional "chapter" or "add-on". Safety and Health professional staff devote substantial effort to technical assistance response activities, responses triggered by both LIUNA members or their local unions, and from contractors employing members of the Union. Senior professional safety and health staff are also deeply participative at the federal level being appointed members to advisory committee's such as the OSHA Advisory Committee on Construction Safety and Health and the Federal HUD Task Force on Lead-Based Paint Activities. Safety and Health Professional staff are also active in a wide range of federal and related occupational safety and health activities including the EPA-Labor Superfund Safety and Health Task Force (Co-Chair) and a large number of consensus technical workshop and stakeholder conferences, public dialogue and similar meetings.

Because of the high hazard nature of the environmental restoration mission and the unique occupational safety and health dimensions of the Department of Energy, we have in like manner been actively working with the DOE for over 4 years. Our focus and emphasis has been primarily on safety and health matters specifically associated with the environmental restoration mission. Such includes, of course, a wide range of inter-related issues including safety and health standards, construction contracts, exposure monitoring and medical surveillance, training, recordkeeping, site characterization, remediation technology, advanced technology for environmental restoration and a host of other elements essential to the safe performance of this unique environmental restoration mission.

Since the appointment of Secretary O'Leary and Dr. Tara O'Toole as Assistant Secretary for Environment, Safety and Health at DOE, a number of critically important actions have been undertaken on the safety and health front. These include the Safety and Health Assistance Initiative, the Contract Reform Team, and activities to focus on the Congressionally mandated medical surveillance program among many others. We have participated as a stakeholder, participants, expert peer reviewers, testifiers, and participants in these and many other DOE activities related to safety and health matters. It is upon this basis, that the following comments are offered with regard to the current status of occupational safety and health within the DOE complex.

SAFETY AND HEALTH STANDARDS:

Occupational safety and health standards within the DOE complex have officially been indexed to the current OSHA occupational safety and health standards with expansion to include DOE hazard specific additional standards, such as those specific to radiation hazards. These standards provide a sound basis for the management of occupational safety and health programs within the complex. However, there are many elements of the OSHA standards and basic protection contained within the OSHAct with regard to workers that do not apply to the DOE complex. Of importance in that regard is the matter of safety and health complaints by workers. DOE has initiated a "complaint system", termed the whistle-blower protection program, to address this deficiency. That program is seriously deficient and defective. Construction worker complaints, with which we are specifically familiar, have resulted in no remedy of the hazard of concern, the expenditure of thousands of dollars paid to the "prime" contractor to investigate the alleged safety and health violation of one of their own sub-contractors, and over 6 months for the completion of the investigation and related report.

This is not an effective worker complaint process. Worker safety and health complaints must be viewed as "sentinel events", not actions which require the time-consuming, costly investigation by a DOE contractor which should be responsible for the safe performance of the work in the first place.

Workers essentially have no effective safety and health problem remedy at DOE, if their complaints are not addressed by their immediate supervisor or employer.

The Department has expressed the desire that OSHA be given jurisdiction over the DOE complex. That approach has been resisted, rightly so, by the Secretary of Labor because of a lack of commitment of the needed resources to carry-out that mission by the Congress. We agree. OSHA currently lacks the appropriate resources to carry out its presently mandated mission.

We suggest however, that an interim, pilot approach be initiated with regard to OSHA and the DOE complex. A major primary fundamental problem is the lack of an effective worker complaint mechanism. We propose that the OSHA complaint process be instituted within the DOE complex, that workers be trained in this procedure, that the appropriate forms be provided and made readily available, and that such complaints be sent to a designated OSHA Area or regional Office appropriate to the DOE specific site. OSHA could then process the complaints, pass them on the appropriate DOE office for follow-up, and maintain records of both the complaints and the DOE response and resolution. This approach would provide a "standardized" worker complaint process which is external to DOE and its contractors and provide OSHA a mechanism to establish, with much more certainty, the resources required to undertake the coverage of the DOE complex at some future date. Such information would serve the needs of this Sub-Committee and the Congressional Committee's responsible for allocating the OSHA budget.

THE ROLE OF ES&H:

ES&H must, in our view, serve two basic functions within the DOE complex if the currently poor safety and health culture is to be changed: Oversite and Technical Assistance.

Safety and health oversite is a critical function. It must be conducted from an organization at the DOE headquarters level, be meaningful, be professionally competent and have the authority to require change and enforce it. This function is especially critical as DOE is essentially exempt from ANY occupational safety and health standards or compliance therewith except as mandated and enforced by the Department. There is no other current option.

Safety and health technical assistance is a particularly important activity at this point in the revitalization of safety and health within the DOE. As the Department reduces the number of contractor personnel and moves DOE employees closer to direct line management responsibilities for restoration projects, it is essential to understand that these DOE managers have been insulated from direct project management for years by contract personnel. They simply do not know and understand the practical matters associated with the effective implementation of safety and health programs in the field. They need help, and will continue to need help. ES&H should be the DOE organization to provide this help within the context of a safety and health technical assistance activity function. Contract safety and health technical assistance CAN NOT fill this critical function within the context of the major and complex changes which must evolve if the Department is to undertake the new environmental restoration mission in a manner which assures the protection of workers, the public and the environment.

We fully support the current ES&H re-organization efforts to focus on these two critical functions.

CONTRACT REFORM:

Simply stated, DOE contractors still effectively run DOE. Our experience with a simple matter like the hazardous waste operations and emergency response standard required programs serves as an example. The program at each site among the DOE complex is different. They are not interchangeable. The required training is not comparable nor reciprocal among all sites. The differences are enormous. These are all contractor driven and created.

Prime contractors are, as we begin to examine the medical surveillance issue, being very open about the fact that they have essentially no knowledge about the safety and health performance of their sub-contractors. Sub-contractors, usually hired to do the high hazard work, are simply not part of the DOE system. The contractors which issue the sub-contracts do not evidence responsibility for the safety and health performance of these sub-contractors.

There are a host of deficiencies in the DOE-contractor-sub-contractor relationship. Many of these directly impact safety and health. The Secretary established a Contract Reform Team to address this matter in 1993. The Team issued a Report in early 1994. It contains a number of recommendations which could have safety and health significance, if properly implemented. To date, there has been not "Contract Reform Implementation" plan.

Contract reform is essential. We and others testified and provided written comments during the public hearings held be the Reform Team. We know what contract issues are essential to the achievement of a safe and healthful work place, especially in construction. We provided examples, including the Corps of Engineers Programs and the Chemical Manufacturers Association contracting guidelines, which included contractor pre-bid qualifications, written safety and health programs, safety and health audits, safety and health incident investigations, injury/illness reporting and recordkeeping, and several other elements.

Contract reform MUST consider safety and health issues. ES&H must be involved in the Reform implementation process. Reform must be implemented promptly, there remains no excuse for delay considering the ample evidence of the elements of successful contract-based construction activities.

EMERGING TECHNOLOGY:

Environmental restoration activities within the DOE complex will involve challenges which will often be more complex than the typical Superfund remediation project. DOE has undertaken a number of environmental technology development programs to meet this challenge. EPA has a similar program, termed the SITE program, focused on the development of new restoration technologies. These programs are unique in that they do not consider technology specific operational safety and health issues.

This deficiency needs to addressed within the context of the recognition of technology specific safety and health hazards, the development of appropriate technology specific Standard Operating Procedures (SOP's) which respond to these technology specific hazards, and the training of workers utilizing these technologies in the technology specific safety and health SOP's.

There has essentially been no technology development in the area of personal protective equipment for workers engaged in high hazard tasks in the last 20 years. ES&H has undertaken a modest program to focus on this issue from the perspective of the high hazard environmental restoration worker. We support that program and the genuine need which it seeks to meet.

D/D/D:

Decontamination/Decommissioning/Demolition of many of the structures within the DOE weapons complex is an important element of the environmental restoration mission. This is unique work. It

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is NOT typical of NPL, Superfund or private sector hazardous waste operations. This work presents the potential for significant hazards which, within the context of our experience base, may be viewed as unique and demanding of special attention from the worker safety and health perspective.

ES&H should devote a specific activity to assessing the potential hazards associated with D/D/D work and develop hazard prevention practices and procedures for this work as may be appropriate

CURRENT STATUS:

The DOE occupational safety and health program is beginning to emerge within DOE, at least within the form of a recognizable entity. It remains completely unclear as to how this program will, in fact, be implemented and whether all of the necessary elements associated with effective implementation, such as contract reforms, will be linked with the safety and health initiative.

Once again, it is important to state that the time for writing policy documents, standards interpretations, programmatic guidance, guidance manuals, and the like is, or certainly should be, over. It is the time for execution of these vital programs.

It is time to find out whether DOE has a viable occupational safety and health program, whether is can be implemented effectively, and whether DOE is "in-charge" or its contractors remain so. The wellbeing of thousands of workers, the public and the environment are at stake.

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